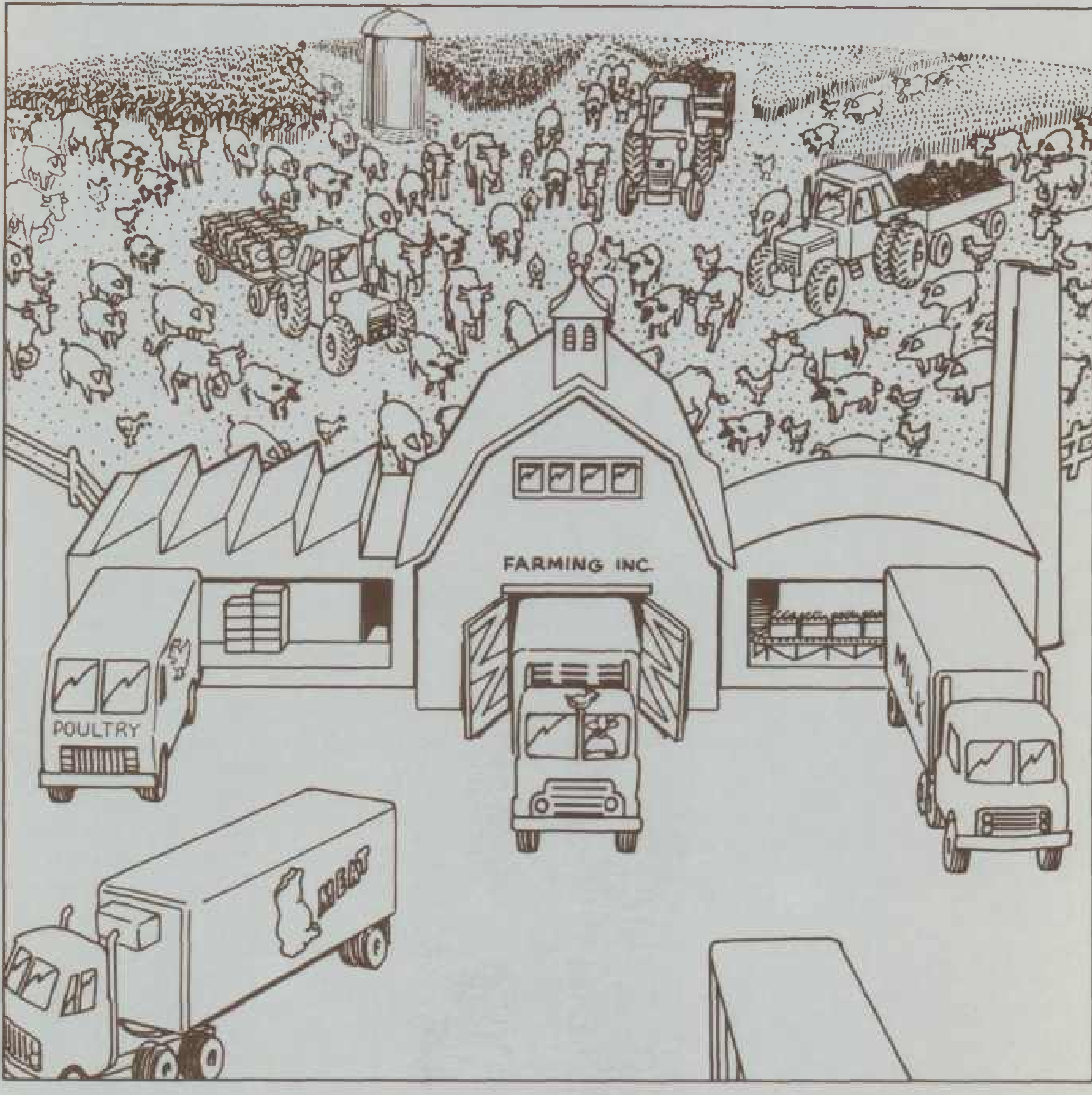
State Regulation of Corporate Farming

Thomas D. Edmondson
Kenneth R. Krause



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ABSTRACT

As of December 1977, 10 States had enacted legislation restricting corporate farming (farm operations, vertical integration, and ownership of farmland). The statutes' main intent was to protect the family farmer from competition by large agribusiness firms. Those statutes are described and their effectiveness analyzed. The available data on corporate farming operations, from the census of agriculture and the Internal Revenue Service, suggest that the State statutes may be premature; corporate farms with more than 10 shareholders account for only 5 percent of total U.S. agricultural sales. Thus, some States concerned with the encroachment of corporate farming are considering enactment of reporting laws to collect more specific information.

Keywords: Corporate farming statutes, farm organization, vertical integration, landownership, real estate, State laws, alien regulation.

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CONTENTS

SUMMARY

The corporate presence in U.S. agricultural production is not yet significant. Agricultural corporations with more than 10 shareholders produced only 5.3 percent of total U.S. farm sales according to the most recent estimates. Because corporations are heavily involved in producing certain crops, however, like fruits and nuts, broilers, and sugarcane, there is a perception of unchecked corporate penetration into the agricultural sector. In response to that perception, 10 States, most since 1970, have enacted statutes that restrict corporate farming activities. In all 10 States, agriculture is the leading industry or a very important one.

The intention of the statutes (enacted through December 1977) is to maintain a competitive market environment and to preserve the family farm as the dominant farm production unit. To accomplish that, the statutes restrict the farming activities of investors and firms outside the farming sector. The State restrictions vary. Some virtually prohibit large corporations from owning farmland, operating farms, and vertically integrating into farm production. Others impose restrictions only on specific activities or commodities. Most of the statutes contain exceptions that allow authorized corporations (primarily family farm corporations) to own and operate farms. Some of the statutes impose only minor restrictions that probably do not deter prudent investors from accomplishing their objectives. The relevant statutes are summarized in detail in the report.

Alien investment is the object of restrictions in some of the 50 States. Seven States have statutes that prohibit almost all alien real estate investment whether by individuals or corporations. In five States, the amount of acreage that may be owned by aliens is substantially limited. In many States, however, the restrictions are minor. The alien statutes are also briefly reviewed in an appendix.

While some of the farming statutes impose substantial limits on corporate involvement in agriculture, they do not entirely protect the family farmer from nonfarm investors or large-scale enterprises. The State statutes for the most part, do not apply to nonfarm investors who enter farm production through sole proprietorships, partnerships, or trusts. Individuals and firms who use those forms of business organization to engage in farming may pose competition equal to or greater than that from incorporated businesses. That is particularly the case where there are various incentives--such as achieving economies of size, capital appreciation, or income tax avoidance--for investing in the farm sector and for producing farm products on a large scale. Most of the statutes are also silent on contractual arrangements between suppliers, processors, and farmers.

Several States require detailed public reporting by farm corporations. Iowa's reporting law also includes partnerships under its requirements. The available data on corporate farming are not sufficiently detailed to allow a complete assessment of the nature and extent of corporate farming. Because of that, the States may wish to use reporting laws to collect more specific information.

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INTRODUCTION

As of December 1977, 10 States had enacted legislation to limit the agricultural activities of corporations. The statutes were enacted in response to the perception that corporations represented a threat to the family farm. That perception was based on the increasing size of farms and by the presence of large, highly integrated corporations in producing certain crops: nuts, broilers, sugarcane and sugarbeets, citrus fruits, vegetables for processing, and fluid-grade milk. To varying degrees, the statutes restrict corporate agricultural operations by limiting the size of corporate landholdings, by restricting corporate integration into farming, and by preventing corporations from engaging in agricultural production altogether.

The statutes are effective in accomplishing their narrow goals; many, however, contain exceptions and exemptions that undermine their wider purpose of protecting the family farm. For example, the statutes emphasize restricting corporations, but none of the statutes restrict other types of nonfarm operations (limited partnerships, for example). Besides that, however, the timing of the statutes may be premature. The available data suggest that corporate involvement in agricultural production is not significant--either in the United States as a whole, or in those States that enacted the statutes. In 1969, total agricultural production by widely held corporations 2/ was only 3 percent of the U.S. total; in 1974, the latest figures available, the figure had risen to 5 percent. U.S. farming is still very much a family-run business. Proprietorships, family owned and operated partnerships, and family corporations comprised 99 percent of all farms and accounted for 95 percent of all farm sales in 1974.

To obtain a more accurate picture of the extent of corporate farming activities, the States may want to enact laws that require agricultural firms to report their landholdings, operations, shareholders, etc. By doing so, the legislators will be better able to ascertain which aspects of agriculture require legislative protection. The legislature can then enact a law to meet a specific need rather than a more general law that may unnecessarily restrict a firm's operations.

This report assesses the statutes and their implications and provides the latest data available on the nature and extent of farm corporations and vertical integration into farming. The data were compiled by the Bureau of the Census, the Internal Revenue Service, and the Economics, Statistics, and Cooperatives Service. The report concludes with a comprehensive review of the State statutes regarding corporate farming activities and, in an appendix, a brief treatment of State statutes affecting alien investment in U.S. agriculture.

1/ Edmondson is an attorney with the Office of General Counsel, U.S. Department of Agriculture; Krause is an economist with the Economics, Statistics, and Cooperatives Service, USDA.

2/ The census of agriculture, our primary source of data, divides farm corporations into two groups: those with 10 or fewer shareholders and those with more than 10 shareholders. Throughout the paper, we have referred to those groups as closely held corporations and widely held corporations. Although those two designations do not correspond exactly to private and public corporations, we do feel that most of the closely held corporations are private.

This report updates "State and Federal Legal Regulation of Alien and Corporate Land Ownership" which identified those States with statutes and applicable court cases dealing with corporate investment in farmland and agricultural production through June 1974 and provided a brief review of each. (1) 3/ When used in conjunction with "Legal Regulation of Alien Land Ownership in the United States," the present report provides a more complete perspective on the regulation of alien and corporate investment in land and agricultural production and vertical integration into farm production. (2)

3/ Underscored numbers in parentheses refer to sources listed at the end of each section.

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THE CURRENT STATUTES

Kansas adopted its corporate farming law in 1931, becoming the first State to do so (among those with statutes in effect as of December 31, 1977). North Dakota adopted its statute in 1932; its law remains the most comprehensive in banning corporations from agricultural production. Texas' corporate farming statute (enacted in 1955) is aimed mainly at preserving open range cattle production and at preventing integration between cattle production and meat processing. The other States adopted their laws in the seventies: Oklahoma in 1971, Minnesota in 1973, South Dakota and Wisconsin in 1974, Iowa, Missouri, and Nebraska in 1975. Several of these States amended the laws in subsequent years. In addition, Oregon enacted a reporting law in 1977 and West Virginia has had, since 1939, a statute requiring a landowner to obtain a certificate of authorization for all land owned above 10,000 acres (fig. 1).

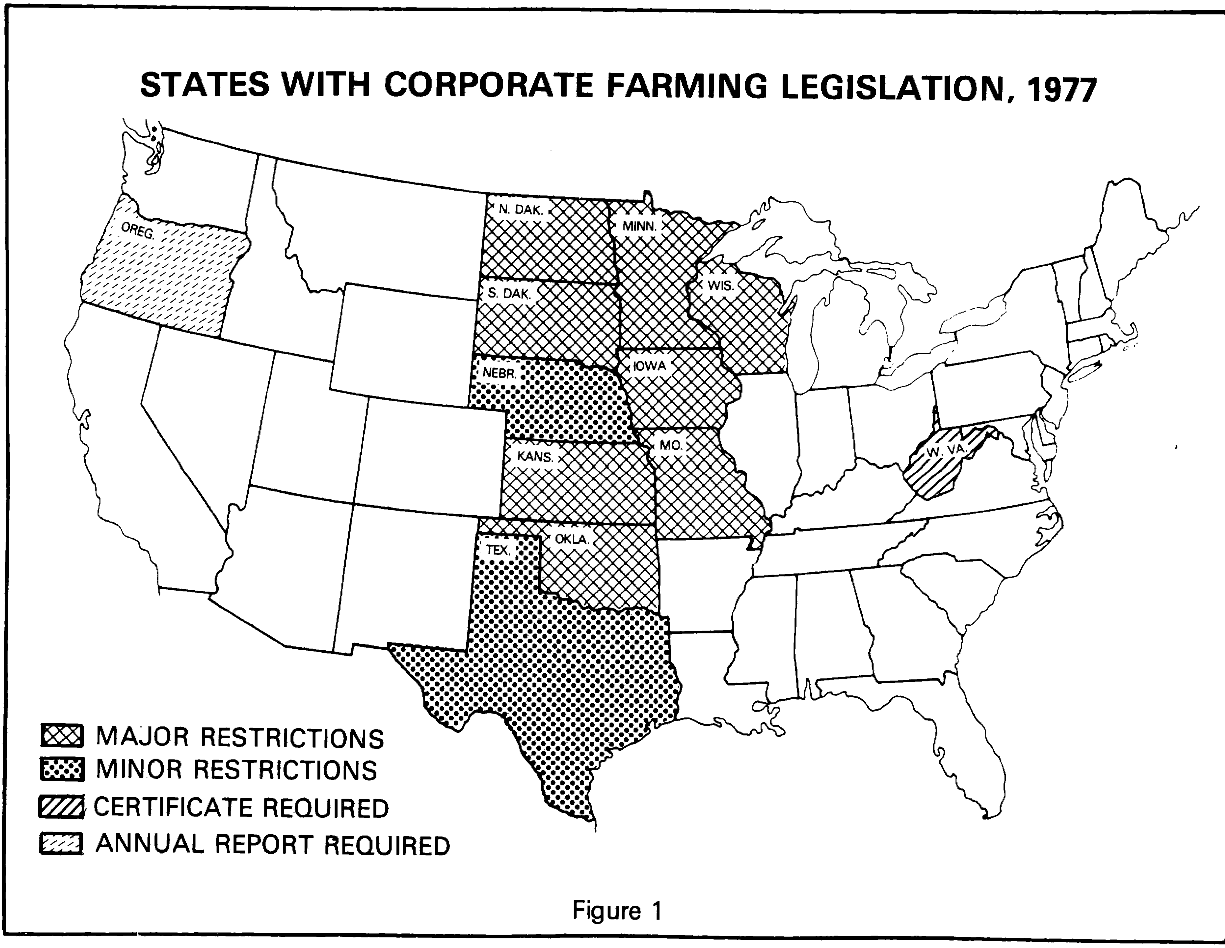

Figure 1

Consideration of such statutes has not been confined to those States, however. Legislation to restrict corporate farming activities has also been introduced in Tennessee, Oregon, Montana, Kentucky, Indiana, Illinois, and Colorado. Those States had not enacted such legislation by December 1977. In addition, some Federal legislation has been proposed, but not enacted. Most recently, for example, the Family Farm Antitrust Bill (H.R. 941) was introduced in Congress in 1977 to prohibit large nonagricultural firms from engaging in farming.

The reasons for the restrictive statutes, as set forth in their objectives, include preserving and protecting the family farm as the basic unit of production and maintaining competition in agriculture. Some States have also added that the statutes are designed to protect family farms against monopolization of the agricultural industry and to prevent vertical integration of nonfarm corporations into farm production. 4/

The general concern in enacting the statutes was to prevent large businesses from controlling farm production locally, regionally, and nationally. Corporations were apparently singled out, not because of their form of business organization, but because of their size: large business firms usually use the corporate form of business organization.

An equally important concern was to stem the influx of investments in agriculture by "farm outsiders." Nonfarm operators are resented by those who believe that farms should be owned, operated, and controlled by individual families who buy and sell through open competitive markets. More specifically, the focus of the laws was on nonfarm operators, nonfarm investors, and those who integrate into farm production. Other than in the very limited Texas statute, the restrictions were generally not placed on "farm insiders," i.e., farm operators, retired farmers who continue to own farmland, and heirs of farm operators.

Several specific types of nonfarm investors and firms are the objects of restriction: nonfarm investors whether individuals or syndicates with large equity and credit positions who are interested in farming only as a secondary investment but who retain sufficient control to preserve and enhance their investments; food and fiber firms, such as suppliers, marketers, processors, transporters, wholesalers, and retailers, presently integrated into farm production either through ownership or contractual arrangements and who have finances and incentives for expansion; large nonfarm firms that may or may not be involved in food and fiber system activities but are not integrated into farm production. The firms in the last category are usually involved in other sectors of the economy, such as oil and gas production, transportation, retailing, manufacturing, or insurance.

Agricultural investment from nonfarm sources has increased because of several factors. The increased size and scope of farming operations have required additional capital. The increased size, in turn, has been encouraged by new production and marketing technologies that require larger sizes to be cost effective and by the expanding export market. Agricultural investments were also enhanced by tax laws that allowed so-called "tax loss" farming, that is, farm losses were used to offset nonfarm income. (4, 6, 7) Some of the tax advantages, however, were lessened by the Tax Reform Act of 1976. That Act made partnership formation less attractive in certain cases to nonfarm investors by limiting claims of losses by the investors to the amount that they actually had at risk in the venture. Previously, the entire amount of the annual loss incurred by the partnership was distributed in a pro rata basis among all partners.

As is shown in more detail by the data in a later section of this report, the States that have enacted the statutes were, for the most part, unaffected by large corporate farms, either through direct production or contractual arrangements. Only in Texas did sales of widely held corporations exceed 5 percent of total farm sales within the State. 5/ Other States without restrictive statutes had higher concentrations of

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4/ With the exception of North Dakota, there has been no noticeable restriction on family farms that incorporate. In Successful Farming, Fred Woods expressed the view that many more family farms will incorporate in the future. (1) Several incentives favor a farm's using the corporate form of organization. (2, 3)

5/ Neil Harl has observed that to date no "giant" corporations have been able to compete successfully in the Midwest. (5) He suggests that, in other parts of the country, the success of larger operations seems to be attributable to uniqueness of risk (e.g., a combination of production, price, and size of dollar exposure), capital infusion, economies of scale, and type of management required. Yet the States with statutes are for the most part those without "giant" corporations.

corporate farm sales. The State with the largest such concentration is Hawaii, where 81 percent of total farm sales were derived from widely held corporations. In enacting their statutes, therefore, it seems that the States were responding more to a perceived than actual threat to the family farm.

In general, the data that have been collected at the Federal level are not sufficiently detailed to allow one to judge the full extent of corporate involvement in agriculture. One, therefore, cannot ascertain whether or not a problem exists or the nature of the problem. The sources traditionally available (the census of agriculture, aggregated to the State level, and returns filed with the Internal Revenue Service, purged of individuals' names and aggregated to the national level) do not provide an adequately detailed picture of the situation. In an effort to obtain more facts, some States, like Oregon, have postponed enacting any restrictive legislation and have instead enacted a reporting law requiring each farming corporation operating in the State to provide detailed information on its landholdings, products produced, and names of shareholders. Until such information is fully and accurately reported and analyzed, any attempts to regulate corporations will probably be unsuccessful. Although legislation that is inadequately informed may achieve the narrow goals specifically expressed, it will probably fall short of achieving the wider goals of assuring the orderly production of agricultural goods in an equitable manner through an independent system of family farms.

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NATURE OF THE STATUTES

Some of the statutes contain exemptions for particular activities or contain grandfather clauses that may decrease the statute's effectiveness in attaining its stated objectives. Most restrictive statutes, however, may affect economic activities more than the States had anticipated. This section assesses the viability of the statutes and their possible economic impacts.

Partial Restrictions

The statutes of the different States do not coincide in their intended effects. Eight States have what are generally referred to as "family farm laws," designed to help preserve the family farm as an independent economic entity, buying and selling in a competitive market. Other statutes were designed to help preserve only certain features of the independent family farm. For instance, Nebraska and Texas do not focus on protecting the family farm from large corporations. Nebraska's statute forbids corporations not chartered in the State from owning or leasing land. Corporations chartered in Nebraska are not restricted in their agricultural enterprises. The Texas statute restricts, in a very limited manner, monopolization in a subsector of the food system. Texas apparently wanted to preserve a structure of cattle production that is not vertically integrated with meat processing. The Texas statute does not prohibit outside firms and individuals, not otherwise involved in processing, from entering cattle production.

Nebraska, however, with the other eight States, restricts monopolization from outside interests. Iowa likewise specifically prohibits meat processors from integrating into feeding their own cattle or to placing feeder cattle with farmers under contractual arrangement. But the Iowa statute, for at least a few years, also restricts outside corporations with 25 or more shareholders from entering farming. The Oklahoma statute restricts outside investors from entering farm production but specifically allows vertical integration in farming. The South Dakota statute is similar to the Oklahoma statute. It permits 10 unrelated nonfarmers to own a corporate farm business in conjunction with a nonfarm business which could include food processing and marketing. This permits integrated livestock operations.

Most of the statutes include grandfather clauses that exempt corporations that were in existence before the statutes were passed. In addition, none of the statutes directly restrict the activities of partnerships. Partnerships thus continue to have the potential to attract outside money into farming activities.

Fred Morrison has suggested that, in addition to specific exclusions and exemptions and forms of legal business not restricted, there are legal ways that firms and nonfarm investors can still accomplish some of their general economic and financial objectives. (1) He suggests that large corporations, not directly involved in farm production (for instance, suppliers and farm product exporters), can engage in production and market contracting with farm producers in most of the States with statutes. Even in North Dakota, with the strongest statute restricting corporate farming, it would be possible for a wheat farmer to contract his crop to an elevator corporation in which he is the principal owner, in order to reduce his farm income for tax purposes. When production under contract occurs, production, marketing, and price risks along with major management decisions may be shifted to the contractor. Such contracts may leave the farm producers with limited managerial freedom but yet require him to supply large amounts of production capital in the forms of farm real estate and labor. Some farm producers seem willing and in some cases eager to accept production or marketing contracts, but at the same time want to prohibit the integrator, nonfarm investor, and corporation from owning farm resources.

The examples provided elicit two observations. First, the States with restrictive statutes are not all unanimous in their emphasis on those aspects of agricultural production that they set out to protect. A large part of the difference among statutes can probably be attributed to the different agricultural production in the States and the importance of those different commodities to the States' economies. Secondly, even in those States with the more inclusive statutes, the exceptions and exemptions written into the laws probably provide enough scope for corporations and investors to accomplish their ends. Taken individually or as a group, the statutes contain enough exemptions and exclusions that they do not themselves appear to guarantee a future independent family farm structure.

We suggest that, before enacting restrictive statutes, the States can better serve their agricultural producers by enacting reporting laws to collect more complete and accurate data on farm structure. With more accurate data available, the legislatures would be in a better position to ascertain which facets of the food and fiber system needed protection, and could then enact legislation that better reflects that need.

The statutes will likely have a mixed impact on preserving an independent family farm structure in the States with statutes as well as in those States without statutes but with similar agricultural resources. Morrison has suggested that the significance of the statutes probably stands not so much in their specific provisions and exclusions but in their symbolism. He observed that an abuse of economic power by large firms or the excessive use of legally permissible avoidance techniques (like financing and contracting for activities otherwise forbidden or by setting up noncorporate organizations not subject to the statutes) could incite the same political forces that enacted the statutes. He suggested that another round of "tighter and more restrictive" statutes may, however, give at least temporary protection to the independent family farm.

Accord with Other Statutes

The effectiveness of the statutes may be affected by the other State and Federal regulations and programs that can help or hinder the States from accomplishing their objectives. The Farmers Home Administration, for example, lends to smaller farmers for farm real estate, farm operations, and rural housing, as well as for disaster relief. With its emphasis on the small farmer, Farmers Home indirectly supports the intent of the statutes. Similarly, regulations of Packers and Stockyards, Agricultural Marketing Service, are aimed at restricting integration of custom feedlots and meat-processing operations. In those cases where the regulation applies, it may encourage independent feeders and discourage large integrated operations. The Farm Credit Administration, on the other hand, although providing loans to family farmers, may sometimes work against the full intent of the State statutes. Because of the nature of the regulations of the Farm Credit Administration and the intermediaries involved in the lending process, Farm Credit banks sometimes lend to corporate farms and nonfarm investors. Similarly, State and Federal banking regulations may have a mixed impact on the statutes; banking regulations, particularly loan and size limits and interest rate usury laws, may affect the formation and operation of corporations. State usury laws, for example, often apply only to individuals and not to corporations, the intent being to protect the individual from high rates of interest. In times of tight money, however, lenders will be reluctant to finance individual loans at the low interest rate when they can receive a larger return by lending to corporations.

Federal Reserve Board policy on the availability and cost of credit affects banks in both rural and urban areas and can thereby affect farms as well. For example, a lack of funds at competitive rates in rural areas could favor large firms that can arrange for borrowing from urban centers. Federal income tax regulations and rulings are thought to have attracted nonfarm investors to farming, especially those regulations regarding cash accounting, current expensing of costs, loss carryback and carryforward, capital gains, and combined farm and nonfarm income accounting. Recent laws and rulings in the environmental and health and safety fields apparently differ in their effects on farm firms and may encourage or deter outside investors. For instance, the often high cost of meeting environmental standards may discourage both small and large livestock producers from expanding or even staying in business.

Federal farm programs that directly or indirectly influence farm commodity prices can encourage nonfarm investors to participate in farming. The Government's import and export policies on food can make farm investments competitive with other alternatives.

In addition, there are many State and Federal research and education institutions that are funded by the legislatures. These institutions, with private firms, have developed technology that is thought to provide incentives for farm enlargement and to help nonfarm investors obtain competitive returns. This new technology is intended to increase the farmers' efficiency. The cost of applying the technology, however, as in the case of larger and more productive tractors and farm equipment, or with mechanizing the production of broilers, often exceeds the small farmer's capability. The small farmer then, compelled to use less efficient machinery, may be placed at a competitive disadvantage.

Uncertainties

The family farm has generally been able to provide most types of food and fiber in ample supply and at a reasonable price to the consumer. Certain types of farming and integrated activities may, however, be beyond the scope of the ordinary farmer's managerial and financial ability. Consequently, some large farms, usually corporations, have begun to produce agricultural commodities and to provide agricultural services. In enacting legislation that restricts the activities of corporations, the States may inadvertently create an atmosphere of general uncertainty in the business sector. Such an atmosphere may affect the States' economies more than the actual laws themselves and more than the States had anticipated. Besides circumscribing the area of permissible corporate activities, such regulations may discourage those corporate activities that are allowed or exempted and may discourage other corporations from moving to States with such regulations.

Businesses need a relatively stable commercial environment in order to grow and provide their services most effectively and efficiently. Regulatory statutes and the litigation and uncertainty that often accompany them may reduce outside investment and hinder the allocation and efficient use of business resources. Inevitably, such impacts will also affect consumers. For the firm itself, restrictive statutes create uncertainty about permitted future use of resources. Especially important is whether the firms' current and contemplated investment in plants, equipment, and personnel will be able to be used in the most profitable manner.

Corporations will probably avoid States with strong restrictions on corporations and States where a new round of more restrictive statutes or unfavorable court rulings is highly probable. In abandoning such States, the corporations would be expected to choose other States, or countries, for their farming activities. Even large family farms that want to grow larger may leave a State or start new operations in another State with laws more conducive to growth. Such corporations may have provided the jobs, tax revenues, and private sector growth that the State wanted to encourage.

Nonauthorized corporations that are exempted by the laws may similarly choose to go to another State or country without such restrictions. That would be expected especially when a firm believes that, by expansion or vertical integration, it will achieve economies of size and increase efficiency and profits. In causing an exodus of businesses, the State with the restrictive statutes loses investment money and managerial and entrepreneurial ability that may be important.

Some agricultural development projects, like timber development and irrigation of large tracts to make an area suitable for farming, require large firms that are able to accept high risks and endure possible negative cash flows and returns on investment for several years. Other projects may require large firms to achieve the greatest efficiency in use of developed resources over a period of years. For example, a watershed can be farmed most efficiently in large tracts with continuous contouring. If the watershed were divided into smaller tracts, each operated by different farmers using different cultivating methods, the diversion of the runoff from its natural flow would probably increase silting and erosion. If the void created by the loss of prohibited firms is not filled by others, the State will lose jobs and gross income, and may handicap development of its resources.

The efficiency of the farms and the food processors may also be reduced. Family farms that cannot afford to use the larger, more efficient machines and equipment will have to use smaller farm machines, which often require more labor. In addition, as in the watershed example above, smaller farmers may not be well enough financed and capable of developing soil and water resources to their maximum production potential with available technology. Where vertical integration is prohibited, the processor may encounter inefficiencies in procuring supplies and in using processing machines, labor, and storage facilities. The farmer may be required to add extra storage facilities to hold storable commodities for better product prices. Extra transportation facilities may be required to transport farm commodities from the farm to the public market and, in turn, to the processor.

Since businesses require a stable climate in which to operate, the uncertainties posed by the statutes might be mitigated somewhat by some of the following suggestions. Restrictive legislation, if necessary, needs to be easily understood and enforced in a uniform manner. Thus, restrictions are probably most effective when placed on specific activities, like livestock feeding by meat processors or purchasing farmland by conglomerates not engaged in food and fiber production, rather than on more general and open-ended farming activities. In addition, uncertainty could be reduced if time limits were placed on statutes so that firms could be reasonably certain of being allowed to amortize their investments. Business firms might receive assurance, in the absence of court rulings, that the statutes would not be changed, for example, for a period of 3 or 5 years. Time limits would also be helpful in assuring that the statutes are reviewed periodically in the light of recent and prospective developments in the agricultural sector.

Reporting Laws

Some States require that all farms located within the State file periodic reports in which the farms disclose certain aspects of the farm's ownership, size, crops, etc. Such reporting laws are a potential means of providing specific data to be used in analyzing the effectiveness of restrictive statutes and the need for restrictive statutes. Reporting laws may also be used to provide information for economic development programs in a State. Reporting laws can provide periodic information on the number of various types of businesses in farming, the changes that occurred from the previous reporting period, and the relative importance of each type of farming organization in controlling a State's farm resources and farm output. With such information, the States can better determine if restrictions are required or if they should be modified.

Seven States currently have reporting requirements: Wisconsin, Minnesota, South Dakota, Nebraska, Kansas, Missouri, and Iowa. The reporting requirements are so new that they have not yet been appraised on the quality of the data, the rate of compliance, or the use that the States make of the information. 6/ Cooperation between the

6/ The initial results from Iowa, Minnesota, and Nebraska have been studied. (2, 3, 4, 5)

Federal and State Governments could be especially helpful for the more complex analyses since corporations with different resources, enterprises, and sizes will be reporting. A regional profile can be formed by combining the basic reports of several States. A cooperative analytical effort will help to fill the gaps in the data and to develop a more comprehensive analysis. 7/

By collating the data from the State reports, the Federal Government could verify compliance with provisions of the Interstate Commerce Act, antitrust regulations, and foreign treaties. The States could use such collations to verify compliance with their statutes. Lacking reports that cut across State lines, the States are not in a position to enforce their laws where firms may be involved in prohibited activities in other States. For instance, while a corporation's activities in Minnesota may be in compliance with that State's laws, its activities elsewhere may put it in the category of an unauthorized corporation in Minnesota. Without access to a collation of the reports of all States, however, Minnesota, in the above example, would be unable to determine the corporation's interstate status. 8/

The Federal Government could also use the State reports to verify compliance with the less frequent national census of agriculture. The information and analysis from the State reports can be used in designing census questionnaires so that emerging developments of regional or national importance are enumerated and analyzed. In addition, the analysts who work with the State data would represent a new source of expertise on the effect and significance of corporate farming.

7/ The potential for cooperative efforts follows concepts advanced by Kenneth Farrell in 1976 and R.J. Hildreth et al. in 1973. (6, 7)

8/ For a lucid treatment of this problem, see Steven Zumback and Neil Harl. (8) While the article focuses on alien investors, the principles developed are similar for domestic entities.

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CORPORATE AND OTHER LARGE-SCALE FARMING

This section presents the available Federal data and assesses the relative importance of corporations in farm production. In addition, a short description of the sources of Federal data is included. The Internal Revenue Service (IRS) has collected data on farm corporations annually from 1957 through 1974. The 1969 Census of Agriculture was the first time that the Bureau of the Census collected information on corporations involved in farming. In the following analysis, both IRS and census data are used, including data from the 1974 Census of Agriculture, the most recent census conducted.

Overview

Data for the 14-year period from 1957 to 1971 indicate that corporations have become more important in farm product sales. The increase occurred during a period when a declining proportion of farms were accounting for an increasing share of production. Those farms that produced most of the food and fiber during this period turned increasingly to the corporate form of business organization, but most such corporations had 10 or fewer shareholders, presumably family farms.

Census data show that there were about 11 times as many closely held corporations as there were widely held ones in 1969; and closely held corporations had nearly five times the sales of the widely held ones. By 1974, there were more than 13 times as many closely held corporations as there were widely held ones; and sales of the closely held corporations were about two and one-half the sales of the widely held.

The commodities in which large corporations specialize, like broilers, eggs, fruits, nuts, and vegetables, are not generally important in the States where restrictions on corporate farming activity have been enacted.

Number and Significance of Corporate Farms

IRS data (table 1) show that the sole proprietorship was the dominant form of farm business organization among firms filing tax returns between 1957 and 1974. There were 3.3 million in 1957 and about 3.2 million in 1974. Partnerships were the second most numerous, but substantially fewer: 136,600 in 1957 and 109,600 in 1974. Partnerships, however, were much more numerous than corporations. The number of incorporated farm businesses filing income tax returns was 8,200 in 1957 and 37,300 in 1974.

During that period, the number of sole proprietorships declined by about 165,000, partnerships by about 27,000, and corporations increased by about 29,000. In relation to all farm business organizations filing returns, the percentage of each changed by less than 1 percent over the 14-year period. The growth in corporations occurred mainly among corporations with 10 or fewer shareholders, most of which are probably privately held corporations. That growth reflects the trend of family farms to incorporate both for tax purposes and for the limited liability provisions of corporate law.

The business receipts of farm corporations increased substantially from 6.8 percent in 1957 to 20.6 percent in 1974. During the same period, the share of the sole proprietorships decreased by 13.4 percentage points, while the share of partnerships showed the least change, down about 0.4 point.

Some corporations have few shareholders and manage their business affairs, including financing and income tax filing, like partnerships. The shareholders are

Table 1--Tax returns and business receipts by form of organization, 1957-74

Year	Tax returns				Business receipts			
	Sole proprietorships	Partnerships	Corporations 1/	Total	Sole proprietorships	Partnerships	Corporations 1/	Total
	Thousands				Billion dollars			
1957	3,343.2	136.6	8.2	2/ 3,488.0	22.4	3.4	1.9	3/ 27.7
1960	3,358.6	126.9	11.8	3,496.6	25.5	3.6	2.8	31.9
1965	3,063.6	116.3	18.5	3,198.4	29.9	4.1	4.4	38.4
1969	3,089.2	108.8	20.5	3,218.8	37.6	5.5	7.8	50.9
1970	2,905.9	111.3	24.1	3,041.2	39.1	6.8	9.0	54.9
1971	2,941.4	109.3	25.4	3,076.1	40.9	6.5	8.4	55.8
1972	3,007.2	102.3	27.5	3,137.0	48.6	8.1	9.5	66.2
1973	3,203.0	111.4	34.5	3,408.0	62.6	11.5	17.9	92.0
1974	3,178.2	109.6	37.3	3,325.1	63.4	11.2	19.4	94.0
	Percent							
1957	95.9	3.9	.2	100.0	80.9	12.3	6.8	100.0
1960	96.0	3.6	.4	100.0	79.9	11.3	8.8	100.0
1965	95.8	3.6	.6	100.0	77.9	10.7	11.4	100.0
1969	96.0	3.4	.6	100.0	73.9	10.8	15.3	100.0
1970	95.6	3.6	.8	100.0	71.5	12.3	16.4	100.0
1971	95.7	3.5	.8	100.0	73.3	11.6	15.1	100.0
1972	95.8	3.3	.9	100.0	73.5	12.2	14.3	100.0
1973	95.7	3.3	1.0	100.0	68.4	12.2	19.4	100.0
1974	95.6	3.3	1.1	100.0	67.5	11.9	20.6	100.0

1/ Corporations were classified and included as farm corporations when the major portion of all business receipts were from farming.
2/ Farms estimated at 69 percent of agricultural, forestry, and fisheries corporations.
3/ Farm business receipts estimated at 67 percent of agricultural, forestry, and fisheries corporations.

Source: Statistics of Income: Business Tax Returns, Internal Revenue Serv., U.S. Dept. Treasury.

Table 2--Tax returns, total assets, and business receipts, by type of farm corporation, 1963-71 1/

Year	Subchapter S			Other corporations		
	Returns	Total assets 2/	Business receipts	Returns	Total assets	Business receipts
	Number	--Million dollars--		Number	--Million dollars--	
1963	3,725	704	NA	12,501	3,810	NA
1964	4,444	830	NA	13,133	4,094	NA
1965	4,862	929	NA	13,663	4,492	NA
1966	5,409	1,180	766	13,520	4,748	4,104
1967	6,424	1,369	1,044	15,335	5,049	4,238
1968	6,164	1,521	769	13,811	4,815	4,408
1969	6,503	NA	887	13,963	NA	6,863
1970	8,667	NA	1,184	15,439	NA	7,811
1971	8,719	NA	1,409	16,682	NA	7,014

NA = Not available.
1/ Corporations were classified and included as farm corporations when the major portion of all business receipts was from farming.
2/ Estimated by multiplying the average assets for each class interval times number of subchapter S corporations.

Sources: Statistics of Income: Business Tax Returns, various issues, and unpublished IRS Source Book of Statistics, Corporation Income Tax Returns. Data not available since 1971.

often members of the same family. Many of the closely held corporations file Federal income tax returns under subchapter S corporation provisions. 9/

Closely held (subchapter S) corporations, where the majority of the sales were from farming activities, were in the minority in 1963, 3,700 returns versus 12,500 for other corporations (table 2). The subchapter S corporations were still in the minority in 1971 with 8,700 returns versus 16,700 for other corporations. The data indicate, however, that farming corporations filing as closely held corporations increased at a more rapid rate than those filing under general corporation provisions. 10/ But the proportion of business receipts received by subchapter S corporations was about the same in 1971 as it was in 1966. Subchapter S corporations had about 16 percent of the receipts in 1966 and about 17 percent in 1971.

The census of agriculture is based on different concepts than the IRS reports. Despite that, the 1969 Census and IRS numbers were similar: 21,513 census farm corpor-

9/ Under subchapter S provisions, corporations with 10 or fewer shareholders (15 under the 1976 Tax Reform Act) are treated as partnerships for Federal income tax purposes if the income is passed directly to the owners who pay the income taxes; no corporate income tax is paid.
10/ The effect of the unified gift and estate tax provisions of the 1976 Tax Reform Act on future formation of closely held corporations cannot yet be determined. However, former incentives to incorporate for the purpose of minimizing gift and estate taxes have been decreased.

ations and 20,466 IRS farm corporations. The census showed that about 14 percent of farm sales were made by corporations with sales of $2,500 or more in 1969 while IRS showed about 15.3 percent. The 1974 census recorded 27,637 farm corporations while IRS recorded about 37,300. The census reported that, in 1974, about 17.7 percent of farm sales were made by corporations with farm sales of $2,500 or more; IRS reported about 20.4 percent. Caution is necessary in comparing sales data since the census reports all corporations with farm sales, while IRS reports as farms only those corporations with the majority of business receipts from farming.

The census reports data for corporations with 10 or fewer shareholders and with more than 10 shareholders. The 1969 census reported 19,716 corporations with 10 or fewer shareholders, substantially more than IRS's 6,503 subchapter S corporations; other IRS farm corporations (13,963) were substantially greater than the 1,797 corporations with more than 10 shareholders reported by the census. Such comparisons for 1974 were not possible since IRS had not yet made available its 1974 data. The difference probably results from many corporations with 10 or fewer shareholders electing not to file tax returns under subchapter S. For example, a 1968 study of California corporations showed that only 23 percent of corporations with 10 or fewer shareholders filed under subchapter S. (1)

In 1974, in the 10 States with statutes, there were 7,407 corporations of which 6,938 were closely held (table 3). Texas was the only State with more than 100 widely held farm corporations. The other 40 States had 20,230 farm corporations of which 18,739 were closely held. Among the 40 States without statutes, California and Florida were the only ones with more than 100 widely held farm corporations.

The number of corporate farms, as recorded by the Bureau of the Census, increased from 21,513 in 1969 to 27,637 in 1974 (table 3). The increase was 50.0 percent in States with restrictive statutes, while the increase for the other 40 States was 16.9 percent. North Dakota was the only State among the 10 States with statutes that showed a decrease in numbers while six of the States without statutes showed a decrease.

In 1974, as a percentage of farms with sales of $2,500 or more, widely held corporations accounted for about 4.2 percent of sales in the 10 States with restrictions, and about 6.1 percent of sales in the other 40 States (table 4). Corporations with 10 or fewer shareholders accounted for about 9.6 percent of sales in the 10 States and for about 14.4 percent in the remaining 40 States. States with the largest number of corporations generally have the largest acreage held and sales by corporations. Corporations in Nebraska averaged more acreage than corporations in the other nine States with statutes. In States with corporate farm laws, among farms with sales of $2,500 or more, widely held corporations accounted for less than 3 percent of all State farm sales except in Texas, Kansas, and Nebraska; Texas corporations exceeded 14 percent of State farm sales. By contrast, widely held corporations exceeded 3 percent of all State farm sales in 17 of the States without statutes.

While farm corporations held large amounts of acreage in some States without statutes, the total acreage was less than 9 percent of all land held by farms with sales of $2,500 or more (table 4). The largest concentration of corporate landholdings was in Hawaii, where corporations held 56 percent of all land in farms. In the Corn Belt, corporate farmland accounted for less than 3 percent of the land area in farms and widely held corporations held only a small part of that.

Corporations and partnerships accounted for a larger proportion of farms as sales increased (table 5). Sole proprietorships, however, accounted for 71.1 percent of the farms with sales of $100,000 or more. Most of the corporations (55.5 percent of the closely held and 66.4 percent of the widely held) had sales of $100,000 and over whereas 55.2 percent of the sole proprietorships had sales of less than $20,000 (table 6).

Table 3--Corporations by States with or without corporate farming laws, ranked by number reporting with more than 10 shareholders, 1974

States	More than 10 shareholders				10 or fewer shareholders				All	
	Number	Acres	Sales	Percent change, number 1969-74	Number	Acres	Sales	Percent change, number 1969-74	Number	Percentage change, 1969-74
	No.	Thou.	Mil. dol.	Pct.	No.	Thou.	Mil. dol.	Pct.	No.	Pct.
States with corporate farming laws:										
Texas	164	3,144	826.2	21.5	1,228	5,668	881.0	16.0	1,392	16.6
Wisconsin	69	117	62.6	11.2	786	532	140.5	55.0	855	50.3
Iowa	47	62	49.0	-30.8	1,012	657	245.4	65.1	1.059	70.5
Minnesota	46	56	31.5	-6.1	675	550	206.9	64.2	721	56.7
Nebraska	40	490	132.7	-4.7	1,116	3,924	562.0	80.8	1,156	75.4
Kansas	33	82	148.7	-19.5	629	1,396	611.0	119.1	662	101.8
Missouri	33	43	26.6	3.1	717	689	113.9	39.4	750	37.4
Oklahoma	19	68	39.7	5.5	287	710	204.5	55.9	306	51.5
South Dakota	14	44	21.5	0.0	426	2,219	113.2	71.7	440	67.9
North Dakota	4	10	3.4	-50.0	62	129	12.2	-30.3	66	-32.9
10-State total	469	4,116	1,341.9	0.0	6,938	16,474	3,090.6	55.2	7,407	50.0
States without corporate farming laws:										
California	303	1,463	721.1	39.6	2,228	3,990	1,904.2	29.7	2,531	30.8
Florida	173	1,605	331.8	33.0	1,831	2,479	654.7	18.9	2,004	20.0
Louisiana	64	309	67.8	-32.6	376	550	110.2	0.8	440	-5.9
Arizona	63	2,324	156.2	61.5	364	3,350	461.4	7.6	427	13.2
Hawaii	55	873	494.8	37.5	117	296	41.0	30.0	172	32.3
North Carolina	54	74	44.0	-22.8	525	327	134.4	-45.3	579	-43.8
Illinois	52	101	41.1	-17.4	476	311	128.1	-11.0	528	-11.7
Ohio	52	21	29.4	0.0	679	266	139.6	31.3	731	28.4
Colorado	48	611	344.0	20.0	845	4,197	466.0	55.5	893	46.6
Washington	48	124	102.0	26.3	898	1,738	326.3	79.6	946	75.8
Arkansas	44	63	65.3	21.4	564	857	162.3	37.5	608	30.4
Georgia	41	57	48.5	17.1	406	606	121.1	-10.1	447	-8.2
Oregon	38	553	45.2	123.5	574	2,389	189.4	40.3	612	43.6
Pennsylvania	35	36	51.0	12.9	509	180	137.6	42.1	544	39.8
New York	34	22	30.2	78.9	874	353	175.3	68.4	908	68.7
New Mexico	32	2,094	60.5	33.3	290	5,861	130.9	41.4	322	40.6
Indiana	32	29	21.1	17.9	784	429	176.9	43.8	816	39.7
Mississippi	31	86	52.7	29.1	460	828	120.8	16.1	491	16.9
Virginia	28	61	14.7	-20.0	382	302	97.7	-8.3	410	-9.2
Montana	25	491	23.5	4.1	1,184	11,551	188.2	64.9	1,209	62.9
Idaho	23	84	19.8	43.7	664	2,079	261.0	32.5	687	32.8
Massachusetts	22	15	19.6	37.5	272	57	51.0	51.1	294	50.0
Alabama	22	39	26.2	-4.3	220	251	72.1	-4.7	242	-4.7
Wyoming	20	969	4.4	11.1	528	8,882	77.3	29.7	548	28.9
Connecticut	19	13	28.3	52.6	154	30	28.7	40.0	173	45.3
Maryland	18	18	13.4	5.8	263	146	67.9	39.1	281	36.4
Utah	17	116	8.7	-5.5	293	1,739	53.7	72.3	310	64.8
Michigan	15	21	8.2	-44.4	387	204	98.3	54.8	402	45.1
Tennessee	13	31	8.6	-27.7	169	94	24.8	-34.4	182	34.0
South Carolina	12	26	8.1	-25.0	220	232	46.7	-35.6	232	35.1
Nevada	12	919	5.9	100.0	114	2,502	44.8	25.2	126	29.8
New Jersey	11	8	5.5	10.0	336	97	68.3	39.4	347	38.2
Kentucky	10	15	2.9	-60.0	302	166	42.1	-16.5	312	-19.3
West Virginia	6	2	2.6	0.0	66	48	9.2	4.7	72	4.3
Maine	6	21	14.9	50.0	140	111	41.5	19.6	146	20.6
Vermont	5	2	1.0	150.0	71	39	11.5	57.7	76	61.7
Delaware	4	3	6.6	0.0	77	75	45.8	54.0	81	50.0
New Hampshire	2	1	6.2	0.0	56	19	12.8	30.2	58	28.8
Alaska	1	1	1/	0.0	10	408	1.5	42.8	11	22.2
Rhode Island	1	2/	1/	-50.0	31	5	7.2	40.9	32	39.1
				0.0						
40-State total	1,491	13,301	2,932.8	12.2	18,739	58,046	6,932.3	22.9	20,230	16.9
U.S. total	1,960	17,417	4,274.7	9.0	25,677	74,520	10,022.9	30.2	27,637	28.4

1/ Less than $500. 2/ Less than 500 acres.

Sources: 1969 Census of Agriculture, vol. 2, ch. 3, and 1974 Census of Agriculture, vol. 4, part 5.

Table 4--Corporations as a percentage of all farms with sales of $2,500 or more by States with or without corporate farming laws, 1974

States 1/	More than 10 shareholders			10 or fewer shareholders			Sales of all corporations
	Number	Acres	Sales	Number	Acres	Sales	
				Percent			
States with corporate farming laws:							
Texas	.1	2.5	14.9	1.2	4.5	15.9	30.8
Wisconsin	.1	.7	2.7	1.6	3.3	6.0	8.7
Iowa	.1	.2	.8	.9	2.0	2.2	4.6
Minnesota	.1	.2	.9	.8	2.1	6.0	6.9
Nebraska	.1	1.1	3.6	1.8	8.6	15.1	18.7
Kansas	1/	.2	4.1	.9	3.0	16.7	20.7
Missouri	1/	.2	1.2	.9	2.6	5.0	6.2
Oklahoma	1/	.2	2.5	.6	2.4	13.1	15.6
South Dakota	1/	1.1	1.3	1.1	5.5	6.8	8.1
North Dakota	1/	1/	.2	.2	.3	.7	0.9
10-State total	0.	1.0	4.2	1.0	3.8	9.6	10.2
States without corporate farming laws:							
California	.6	4.6	9.8	4.4	12.4	25.9	35.7
Florida	.8	13.1	17.6	8.7	20.2	34.8	52.4
Louisiana	.3	3.9	5.8	2.0	6.9	9.4	15.2
Arizona	1.5	13.7	14.8	8.4	19.7	43.8	58.6
Hawaii	2.6	41.8	81.3	5.6	14.2	6.7	88.1
North Carolina	.1	.8	2.1	.8	3.4	6.5	8.6
Illinois	.1	.4	.9	.5	1.1	2.8	3.6
Ohio	.1	.1	1.3	1.0	1.9	6.3	7.6
Colorado	.2	1.8	17.5	4.0	12.4	23.7	41.3
Washington	.2	.9	6.2	4.3	6.5	19.8	26.0
Arkansas	.1	.5	3.5	1.8	6.9	8.8	12.3
Georgia	.1	.5	2.6	1.1	5.0	6.6	9.2
Oregon	.2	3.3	4.5	3.4	14.2	18.7	23.2
Pennsylvania	.1	.5	3.5	1.4	2.6	9.3	12.8
New York	.1	.3	2.1	2.7	4.3	12.1	14.2
New Mexico	.4	5.5	11.9	3.7	15.4	25.8	37.7
Indiana	1/	.2	.8	1.1	2.7	6.8	7.7
Mississippi	.1	.7	4.4	1.8	7.2	10.1	14.5
Virginia	.1	.8	1.6	1.0	3.8	10.5	12.1
Montana	.1	.9	2.3	5.9	20.4	18.3	20.6
Idaho	.1	.7	1.4	3.4	16.3	19.0	20.4
Massachusetts	.7	3.0	11.1	8.5	11.5	28.8	39.9
Alabama	.1	.4	2.4	.8	2.7	6.6	9.0
Wyoming	.3	3.2	1.2	2.2	29.2	21.6	22.8
Connecticut	.8	3.5	15.3	6.3	8.0	15.5	30.8
Maryland	.2	.7	2.2	2.3	6.1	11.0	13.2
Utah	.2	1.3	2.6	6.8	19.9	16.4	19.0
Michigan	1/	.2	.6	.8	2.1	6.7	7.3
Tennessee	1/	.3	1.0	.3	.9	2.8	3.8
South Carolina	.1	.5	1.2	1.3	4.5	7.1	8.3
Nevada	.7	9.9	4.5	7.0	27.0	34.2	38.7
New Jersey	.2	.9	1.9	6.1	11.3	23.3	25.2
Kentucky	1/	.1	.2	.4	1.4	3.5	3.7
West Virginia	.1	.1	2.2	1.1	2.3	7.6	9.8
Maine	.1	1.6	4.2	3.1	8.6	11.6	15.8
Vermont	.1	1.0	.5	1.6	11.2	5.6	6.1
Delaware	.1	.5	2.6	2.6	12.2	18.3	20.9
New Hampshire	.1	.3	8.8	3.8	5.0	18.2	27.0
Alaska	.5	.1	2/	5.0	26.3	23.1	23.1
Rhode Island	.2	2.2	2/	7.4	11.2	32.8	32.8
40-State total	.2	2.8	6.1	1.9	6.4	14.4	18.3
U.S. total	.1	1.9	5.3	1.5	8.2	12.4	17.7

1/ States are ranked according to ranking in table 4.
2/ Less than 0.05 percent.

Source: 1974 Census of Agriculture, Vol. 4, part 5.

Table 5--Percentage distribution of types of farm organization by farm sales, 1974

Form of organization	Farm sales: $2,500 to $19,999	$20,000 to $39,999	$40,000 to $99,999	$100,000 and over	Total
	Percent				
Sole proprietorship	93.5	90.3	86.6	71.1	89.5
Partnership	5.8	8.6	11.4	18.2	8.6
Corporation:	.5	.9	1.8	10.4	1.7
10 or fewer shareholders	.5	.9	1.7	9.2	1.5
More than 10 shareholders	0	0	.1	1.2	.2
Other	.2	.2	.2	.3	.2
All farms with sales of $2,500 or more	100.0	100.0	100.0	100.0	100.0

Source: 1974 Census of Agriculture (Bureau of the Census, U.S. Dept. of Commerce), volume 1, part 51, table 31 and volume 5, tables 4 and 5.

Table 6--Percentage distribution of farm sales for each type of farm organization, 1974

Form of organization	Farm sales: $2,500 to $19,999	$20,000 to $39,999	$40,000 to $99,999	$100,000 and over	All classes
	Percent				
Sole proprietorship	55.2	19.2	18.5	7.1	100.0
Partnership	36.1	19.1	25.6	19.2	100.0
Corporation:	15.6	9.7	19.6	55.1	100.0
10 or fewer shareholders	13.6	10.1	20.8	55.5	100.0
More than 10 shareholders	13.3	7.5	12.8	66.4	100.0
Other	47.4	19.1	19.5	14.0	100.0

Source: 1974 Census of Agriculture, volume 1, part 51, table 31 and volume 5, tables 4 and 5.

Corporate Commodity Specialization

Certain geographic regions have a high percentage of corporate sales (table 7). The larger widely held corporations tend to be located in Hawaii, California, Texas, Louisiana, and Florida. In Hawaii, a few large corporations produce high-value crops like pineapple and sugarcane. In California, corporations are an important element in producing fruits, vegetables, and poultry and in feeding cattle. In Texas, large cattle-feeding corporations are important, while sugarcane production is a corporate activity in Louisiana. Corporations produce a large portion of the sugarcane in Florida.

The large corporations in the various States, although important, do not dominate total farm sales in any State except Hawaii. For instance, in Louisiana, 24 large corporations produced sugarcane and 6 produced rice, but all corporations produced less than 16 percent of total farm sales. Arkansas, likewise, had a number of large corporations producing rice, soybeans, and broilers but corporations accounted for only about 12 percent of total farm sales. Widely held corporations accounted for less than 15 percent of the sales in each of the 10 States with restrictive statutes. In seven of these States, widely held corporations accounted for less than 3 percent of sales.

Vertical Integration and Contracting

Some of the 10 States with statutes limit certain aspects of vertical integration into farming and contract farming. The most general restriction forbids vertical integration within a firm between farm production and some combination of supplies, marketing, or processing.

Donn A. Reimund studied 410 multiestablishment firms (mostly vertically integrated), each with sales of $1 million or more in 1969. (2) Farming was the major business activity for more than a third of the firms. Most of the firms were organized as corporations. The 410 firms had aggregate sales of $59.1 billion, including farm production of $3.3 billion. About $25 billion was from food and other product sales, some $4 billion of which was the value of inputs of farm products from integrated farming operations.

Farming activities of the vertically integrated firms were concentrated in crops and livestock that favor large operations and allow control over product perishability, uniformity, and timely availability. Beef cattle were produced by more than 25 percent of the firms and were the most common farming enterprise. That was followed, in order of importance, by vegetables, fruits, and poultry other than broilers. Most of the integration in livestock and poultry was by input firms, suggesting that an important motivation for integration was to provide an outlet for manufactured feeds. Vertical integration into crop and dairy farming was mostly by firms involved in processing and distribution.

Ronald Mighell and William Hoofnagle provided estimates of vertical integration and contracting for the major crops and livestock for 1960 and 1970. Corporations apparently account for most of the vertical integration and contracting, both of which increased slightly from 19 percent of farm output in 1960 to about 22 percent in 1970. Contract production was, however, much more prevalent (17.2 percent) than vertical integration (4.8 percent--table 8). Updated estimates by commodity specialists showed no major changes occurring between 1970 and 1977.

Contracting was substantially greater for livestock than for crops in both 1960 and 1970--31 percent versus 9.5 percent. The crops most heavily contracted were sugarbeets, vegetables for processing, seed crops, citrus fruits, potatoes, and sugarcane, ranging from nearly all of production of sugarbeets to 40 percent of output of

Table 7--Farm corporations with more than 10 shareholders and farm product sales of $100,000 or more, 1969

Farm type and major State or region	Commodity	Corporations
		Number
Cash grain:		
Arkansas	Rice, soybeans	11
Louisiana	Rice, soybeans	6
California	Rice	9
Other States		21
Total		47
Tobacco:		
Massachusetts, Connecticut	Cigar tobacco	9
Cotton:		
Delta States	Cotton	6
California	Cotton	6
Other States		7
Total		19
Other field crops:		
Hawaii	Sugarcane, pineapple	22
Louisiana	Sugarcane	24
Florida	Sugarcane	7
Other States	Primarily potatoes in N.W.	17
Total		70
Vegetables:		
Lake States, Illinois	Canning vegetables	26
California	Fresh and canning vegetables	10
Florida	Fresh and canning vegetables	9
Other States		21
Total		66
Fruits and nuts:		
California	All kind	59
Florida	Fresh and processed citrus	49
Northeast	Apples, blueberries	15
Other States		16
Total		139
Poultry:		
Lake States	Turkeys, eggs	18
Corn Belt	Eggs	18
California	All types	16
Arkansas	Broilers	14
Other States		59
Total		125

Continued--

Table 7--Farm corporations with more than 10 shareholders and farm product sales of $100,000 or more, 1969--Continued

Farm type and major State or region	Commodity	Corporations
		Number
Dairy:		
California	Fluid grade milk	7
Other States		19
Total		26
Livestock, excluding dairy and poultry:		
Corn Belt	Fed cattle, hogs	28
Northern Plains	Fed cattle 1/	18
Texas	Fed cattle 1/	18
California	Fed cattle 1/	13
Other States		64
Total		141
Livestock ranches:		
Mountain States	Cow-calf 2/	43
Texas	Cow-calf 2/	19
Pacific	Cow-calf 2/	14
Other States		25
Total		101
General:		
California	Diverse commodities	14
Other States		18
Total		32
Miscellaneous:		
Corn Belt	Nursery operation	20
Pennsylvania	Nursery operation	9
California	Various horticultural products	9
Other States		45
Total		83
All farm types		858

1/ Includes some cow-calf operations.
2/ Includes some fed cattle.

Source: 1969 Census of Agriculture, Vol. 1, except commodity specialty column.

Table 8--Crops, livestock and livestock products, and total farm output as a percentage of output under production contracts and vertical integration, 1960 and 1970

Products	Production contracts 1/		Vertical integration 2/	
	1960	1970	1960	1970
	Percent			
Crops 3/	8.6	9.5	4.3	4.8
Feed grains	.1	.1	.4	.5
Hay and forage	.3	.3	--	--
Food grains	1.0	2.0	.3	.5
Vegetables for fresh market	20.0	21.0	25.0	30.0
Vegetables for processing	67.0	85.0	8.0	10.0
Dry beans and peas	35.0	1.0	1.0	1.0
Potatoes	40.0	45.0	30.0	25.0
Citrus fruits	60.0	55.0	20.0	30.0
Other fruits and nuts	20.0	20.0	15.0	20.0
Sugarbeets	98.0	98.0	2.0	2.0
Sugarcane	40.0	40.0	60.0	60.0
Other sugar crops	5.0	5.0	2.0	2.0
Cotton	5.0	11.0	3.0	1.0
Tobacco	2.0	2.0	2.0	2.0
Oil-bearing crops	1.0	1.0	.4	.5
Seed crops	80.0	80.0	.3	.5
Miscellaneous crops	5.0	5.0	1.0	1.0
Livestock items 3/	27.2	31.4	3.2	4.8
Fed cattle	10.0	18.0	3.0	4.0
Sheep and lambs	2.0	7.0	2.0	3.0
Hogs	.7	1.0	.7	1.0
Fluid grade milk	95.0	95.0	3.0	3.0
Manufacturing grade milk	25.0	25.0	2.0	1.0
Eggs	5.0	20.0	10.0	20.0
Broilers	93.0	90.0	5.0	7.0
Turkeys	30.0	42.0	4.0	12.0
Miscellaneous	3.0	3.0	1.0	1.0
Total farm output 4/	15.1	17.2	3.9	4.8

1/ "Contract production" in farming involves the vertical coordination of farm production under agreements between farmers and processors, dealers, or others that usually deal directly with farmers.

2/ "Vertical integration" means the kind of vertical coordination that goes on within one firm. The production stages that are all coordinated inside that firm.

3/ The estimates for individual items are based on the informed judgments of a number of production and marketing specialists in USDA. The totals were obtained by weighting the individual items by the relative weights used in computing the ESCS index of total farm output.

4/ Totals obtained by combining the total estimates for crops and livestock after adjusting for double counting of farm-produced feed crops consumed by livestock. As in the ESCS index of total farm output, crops represent about two-thirds of the final weight and livestock estimates one-third.

Source: Ronald L. Mighell and William S. Hoofnagle, Contract Production & Vertical Integration in Farming, 1960 and 1970. ERS-474, U.S. Dept. Agr., 1972.

sugarcane. For livestock, fluid-grade milk and broilers led by far. Contract production accounted for over 90 percent in both 1960 and 1970.

Vertical integration was equally important for crops and livestock. Sugarcane, vegetables for the fresh market, citrus fruits, and potatoes were the only products for which integrated firms produced more than 25 percent of output. In livestock and poultry production, integrated turkey and egg producers accounted for more than 10 percent of total volume in 1970. Less than 5 percent of the remainder of livestock and poultry supplies were produced under integrated arrangements, except for broilers (7 percent). Between 1960 and 1970 the volume of integrated turkey production tripled and that of egg production doubled.

In conclusion, as with commodity specialization, vertical integration and contracting tended to occur in commodities produced elsewhere than in the 10 States with restrictive statutes, even before those statutes were enacted. There are exceptions however. While many of the restricting States are important centers of cattle feeding and hog production, the integrating and contracting activities in these enterprises tended to occur in other States. In the 10 States, cattle and hogs are usually produced by family farm firms and sold in open markets. That arrangement is generally true also of grain production which is also very important in most of the 10 States with restrictive statutes.

Federal Data Sources

The data presented above summarize what is available on corporations and vertical coordination from the census of agriculture and the IRS. Some additional information on corporate, large, and vertically integrated farms in the United States (and to some extent in individual States) is available from the following Federal sources. States that want more detail could obtain it by enacting farm reporting laws.

1. The census of agriculture is taken every 5 years. Two years or more elapse before the data are available and another year before analytical reports are prepared and released. To minimize costs, the census is conducted by mail survey. Starting with the 1969 census, farming corporations were classified and enumerated. However, as farming becomes more attractive as an investment to nonfarm operators, information about people who receive income from farming is less complete than in former years.

Special surveys of corporations, partnerships, and contracting are in various stages of completion. Their results should be available between 1979 and 1981. Such surveys, however, are not a regular part of the census and therefore may not be repeated in the future.

2. The Internal Revenue Service obtains information about the characteristics of business organizations in the course of processing each year's tax returns. However, income tax forms are designed to collect revenue due under the Internal Revenue Code and not to enumerate firms and provide data for studies of structure, organization, or related analytical purposes. As opposed to census data moreover, which are available on a State basis and aggregated to a national level, IRS data are available only at the national level. IRS data are developed from a small sample of Federal income tax returns, and are not available until 3 years or more after filing. The data provide little detail about the corporate and partnership forms of business organization. The Commissioner of the Internal Revenue Service is not obligated to provide the information. The most recent IRS data were for 1974 and there is no assurance that data for succeeding years will be made available in the future.

IRS, as with Census, is prohibited by law from identifying individuals and firms and disclosing individual data. Moreover, the data collected by these agencies generally are not sufficiently detailed to permit economies of size studies to be made.

3. The Securities and Exchange Commission requires publicly traded firms to file annual reports, quarterly reports, and certain additional information. Privately held businesses, however, no matter how large, are not required to file such reports.

4. Several private firms have developed manuals that provide additional material on the firms. The reports, although useful in providing a supplement to other Federal data, do not provide much detail about farm enterprises or integration.

References

1. Moore, Charles V., and J.H. Snyder. "Statistical Profile of California Corporation Farms." U. of California Ext. Serv., Giannini Foundation, Exp. Sta., Davis, Cal., December 1960. Information Series 70-3.

2. Reimund, Donn A. "Farming and Agribusiness Activities of Large Multiunit Firms." Econ. Res. Serv., U.S. Dept. Agr., March 1975. ERS-591.

At the end of 1977, 10 States had statutes that restricted certain corporations involved in farm real estate ownership, farm production, or vertical integration. In addition, West Virginia requires corporations to obtain a certificate that authorizes them to hold land in excess of 10,000 acres; West Virginia, however, is not treated as a restrictive State in this report. This section describes the restrictions in each State. The most encompassing statutes are presented first, followed by those with less scope and inclusiveness.

In most of the 10 States, family farms may be incorporated. Certain other corporations are permitted to own farmland, to produce farm products, and to engage in vertically integrated activities. In general, the major intent of the statutes is to exclude large "outside" agribusiness firms and conglomerates from direct farm operations. Table 9 provides a broad and general summary of the restrictions in each statute.

North Dakota

Corporate farming banned; co-ops allowed.

The North Dakota Corporate Farming Law (1) is probably the most restrictive State legislation regulating corporate ownership and operation of farms. The law was enacted to protect individual farmers from corporate farm competition. The legislators may also have been influenced by the many foreclosures on farmland by corporate lenders and life insurance companies. (2) As interpreted by the State Supreme Court, the origin and purpose of the Corporate Farming Law were as follows:

> It is a matter of common knowledge that North Dakota is an agricultural state. Its principal industry is that of farming. It is also common knowledge that prior to the enactment of the Corporate Farming Law there were corporations in existence which were organized and operated for the purpose of engaging in the business of farming and agriculture. These corporations farmed huge tracts of land in this State in competition with individual farmers. It must be presumed that the people of the State, before enacting the Corporate Farming Law by initiated measure in 1932, and the legislators, when they amended the law in 1933, informed themselves and determined that to prohibit corporate farming as a business, except for qualified co-operatives, was necessary to protect the economy of the State and the welfare of its citizens . . . (3)

The law prohibits all corporations, foreign and domestic, from engaging in farming or agriculture. 11/ The single exception to this prohibition is for "co-operative corporations, seventy-five percent of whose members or stockholders are actual farmers residing on farms or depending principally on farming for their livelihood." (4) However, a corporation may acquire, and farm for 10 years, rural land that is suitable for farming. After 10 years, the land must be sold or otherwise disposed of, except for such land "as is reasonably necessary in the conduct of" the corporation's business. (5)

11/ N.D. Century Code 10-06-01 (1960). About 100 farm corporations were reported in North Dakota in the 1969 Census of Agriculture. Although individual census reports are not available for analysis, it appears that the 100 corporations operated under the exceptions and exemptions discussed here.

Table 9--Laws on corporate landownership and/or farm operations, vertical integration, by State and year of adoption

State and year law adopted	Permits family-owned corporations	Permits certain types of vertical integration		Permits certain nonfamily corporate land				Permits certain nonfamily corporate farm operations		
				Ownership		Leasing in or out		Grandfather clause	In perpetuity	
		Crops	Livestock	Grandfather clause	In perpetuity	Grandfather clause	In perpetuity		Breeding farms/ seed	Cattle feedlots
Iowa:										
1975	Yes	Yes	6/ Yes	Yes	Yes	Yes	In/out	Yes	Yes	Yes
Kansas:										
1931										
1973	3/ No	Yes	Yes	4/ NA	NA	NA	NA	No	Yes	Yes
Minnesota:										
1973										
1975	Yes	Some	No	Yes	Yes	Yes	In	Yes	Yes	Yes
Missouri:										
1975	Yes	Some	No	Yes	Yes	Yes	In	Yes	Yes	Yes
Nebraska:										
1975	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
North Dakota:										
1932										
1933 1/	No	No	No	Yes	No	No	No	Yes	No	No
Oklahoma:										
1971	Yes	Yes	Yes	Yes	Yes	Yes	In/out	Yes	Yes	Yes
Oregon:										
1977	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
South Dakota:										
1974	Yes	No	Yes	Yes	Yes	Yes	In	Yes	Yes	No
Texas:										
1955										
1961	Yes	Yes	Yes & No	Yes	Yes	Yes	In/out	Yes	Yes	Yes
West Virginia:										
1939	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
Wisconsin:										
1974	Yes	2/ Yes	2/ Yes	Yes	Yes	Yes	Out	Yes	Yes	2/ Yes

See footnotes at end of table.

Continued --

Table 9--Laws on corporate landownership and/or farm operations, vertical integration, by State and year of adoption--Continued

State and year law adopted	Permits physical growth: Certain nonfamily farm corporations	Permits physical growth: Family farm corporations	Maximum acreage which can be held	Detailed annual reports required of all corporations	Prior approval required for new corporations	Number of shareholders permitted in an "authorized" corporation	Enforcement provisions: Fine	Enforcement provisions: Forfeiture	Enforcement provisions: Suit by private citizens
Iowa:									
1975	No	Yes	NA	Yes	No	25	Yes	No	No
Kansas:									
1931									
1973	Yes	3/ No	5,000	Yes	No	10	No	No	No
Minnesota:									
1973									
1975	Yes	Yes	NA	Yes	No	5	No	Yes	No
Missouri:									
1975	Yes	Yes	NA	Yes	No	Unlimited	No	Yes	No
Nebraska:									
1975	NA	NA	NA	Yes	NA	NA	NA	NA	NA
North Dakota:									
1932									
1933 1/	5/ Yes	No	NA	NA	No	NA	No	Yes	No
Oklahoma:									
1971	Yes	Yes	NA	No	No	Unlimited	No	Yes	Yes
Oregon:									
1977	NA	NA	NA	Yes	Yes	NA	NA	NA	NA
South Dakota:									
1974	Yes	Yes	NA	Yes	Yes	10	No	Yes	No
Texas:									
1955									
1961	Yes	Yes	NA	No	No	Unlimited	No	Yes	No
West Virginia:									
1939	NA	NA	NA	NA	7/ (Yes, if acreage exceeds 10,000)	NA	NA	NA	NA
Wisconsin:									
1974	Yes	Yes	NA	Yes	No	15	Yes	Yes	No

NA = Not applicable.
1/ Subsequent efforts to repeal the law in 1968 and 1974 were rejected in referenda in North Dakota.
2/ Assuming feedlots do not make use of land "cultivated for the production of agricultural crops." Integration is permissible to the extent that a corporation's farming comes within Wisc. Stat. Ann. §182.001(2)(f), or involves products not specifically excluded by §182.001.
3/ There is an exemption for corporations with 10 or fewer shareholders all of whom are natural persons, but who need not be related.
4/ The Kansas statute regulates corporate farming only, not corporate ownership of farmland.
5/ The single exception to the North Dakota law permits cooperative corporations, 75% of whose members are residing on farms or dependent primarily on farming for their livelihood. Feedlots and slaughtering and processing plants may be jointly owned; but these activities may not be combined with raising cattle on the open range.
6/ Processor ownership of feedlots is permitted.
7/ Certificate required if acreage exceeds 10,000 acres.

Thus, a limitation on corporate ownership of rural real estate is imposed in addition to the prohibition against corporate farming. None of the above provisions prohibits a corporation from acquiring title to farmland. (6) However, title to land held in violation of these provisions escheats to the State, if a successful action is brought by the State's Attorney of the county where the land is situated. (7)

The 10-year grace period afforded by the law and the exemption afforded to agricultural land "reasonably necessary" in the conduct of a corporation's business have been the subject of litigation. In order for a corporation to take advantage of the 10-year holding period, the corporation must conduct a business that is authorized by law. A corporation organized expressly to engage in farming does not qualify for the 10-year exemption. Nor may an agricultural corporation circumvent the general prohibition by asserting that its land is necessary for the conduct of its business. The "reasonably necessary" clause applies only to land held for nonagricultural business of a corporation. (8)

A North Dakota corporation cannot be chartered to conduct farming; and a foreign corporation, though chartered as a general business corporation in its State of incorporation, cannot engage in agriculture in North Dakota. (9) Furthermore, the State Supreme Court has indicated that it will interpret the "reasonably necessary" exemption narrowly, so that ownership of rural real estate must be necessary to the conduct of the business for which the corporation was chartered. (10) One permissible use envisioned by the court would be retention of land for a future plant site. (11)

Apart from such clearly nonagricultural uses, however, the Corporate Farming Law imposes a formidable barrier to corporate ownership and operation of farms and farmland in North Dakota. The U.S. Supreme Court rejected challenges to the law under equal protection and due process and the State Supreme Court has held that the law does not violate the North Dakota constitutional provision against special legislation. (12)

The law is not riddled with the exceptions that characterize related statutes in other States. While the 10-year grace period and "reasonably necessary" exemptions have created some confusion and possible loopholes, (13) it would otherwise appear that only farmer cooperative corporations defined in the act may engage in farming as corporate organizations.

Minnesota, Missouri, South Dakota, and Wisconsin

Since 1973, Minnesota, Missouri, South Dakota, and Wisconsin (14) have enacted statutes restricting corporate ownership and operation of farms. The purpose of the South Dakota law, as well as that of the statutes in the other three States, is similar to that of North Dakota's Corporate Farming Law. The first section of the South Dakota statute states ". . . the Legislature recognizes that the existence of the family farm is threatened by conglomerates in farming." (15) The statutes are thus intended to protect the traditional family farmer from corporate competitors, or more specifically, conglomerate organizations. Because the provisions of these statutes are similar, they are discussed together. However, some significant differences among related provisions in the statutes are pointed out; these differences may have substantial effects on the operative scope of the otherwise analogous statutes.

Like North Dakota, the four States restrict both corporate farming activities and corporate acquisition of interests in agricultural land. (16) The Minnesota, Missouri, and South Dakota statutes restrict corporate production of "agricultural crops," livestock and livestock products, poultry and poultry products, milk and dairy products, and fruit and other horticultural products. Forest products are not restricted under the acts; nor are spraying, harvesting, and similar services provided under contract by processors or distributors of farm products or supplies. (17)

Corporate production and land acquisition restricted.

The Wisconsin statute (18) specifically prohibits corporate production of dairy products (not including processing such dairy products), cattle, hogs, sheep, wheat, field corn, barley, oats, rye, hay, pasture, soybeans, millet, and sorghum. While Wisconsin prohibits corporate ownership (presumably in fee simple) 12/ of land on which to carry on the specifically prohibited farming activities, the other three statutes prohibit ownership or acquisition of any interest in agricultural land, whether legal, beneficial, or otherwise. (19)

While the prohibitory provisions of the statutes are fairly simple and closely analogous, the exemptions contained in the statutes are numerous and, though in large measure identical, are to some extend highly individualized. Unlike North Dakota, the other States exempt land owned by corporations up to the effective date of the act. (20) In addition, the Minnesota, Missouri, and South Dakota statutes exempt land leased by corporations prior to the effective dates of the statutes. (21)

Existing corporations exempted, may expand.

All the statutes permit "normal expansion" of farm acreage held by corporations as of the effective date of enactment, at a rate not to exceed 20 percent of such acreage during any 5-year period, plus any additional acreage necessary to meet requirements of pollution control regulations. (22) Thus, quite unlike the North Dakota statute, which requires farm corporations to divest all agricultural real estate interest within 10 years of the act's passage, these statutes protect the holdings of existing farm corporations and permit their expansion. Such provisions may enhance any present competitive advantage of existing corporations over the individual farmer, since corporate competitors cannot now enter the market. To that extent, the purpose of the statutes may be undercut by the exemption.

The statutes also exempt agricultural land held by corporations for nonfarm purposes. The Minnesota, Missouri, and South Dakota statutes limit such holdings to such acreage as may be necessary in the operation of nonfarm business. Pending nonfarm use of the land by the corporation, the land may be leased for agricultural purposes to individuals, family farms, and authorized corporations. (23) The Wisconsin statute permits unlimited corporate ownership of agricultural land for nonagricultural purposes, and allows corporations to lease such land to individuals, exempted corporations, and other types of business entities for farming. (24)

Corporate land for nonfarm purposes.

Minnesota, Missouri, and South Dakota also exempt the family farm corporation. The statutory definitions of the family farm vary, however. The Minnesota statute defines the family farm corporation as the one that is founded for the purpose of farming and owning agricultural land, with the majority of stockholders being persons related within the third degree of kinship. The same persons must also own the majority of voting stock, and one of them must reside on or actively operate the farm. No stockholders may be corporations. (25)

Family farm corporations.

12/ Totality or complete ownership rights are recognized by law. Under fee simple ownership an individual can own property for an indefinite period and has complete ability to dispose of it during a lifetime or by will at death.

The Missouri and South Dakota statutes are similar, except that they do not specify that one of the family members must reside on or actively operate the farm; any stockholder may fulfill this requirement. (26) Thus, a family farm in these States might actually have no resident or active family members.

Exempted corporations.

In addition to family farms, Minnesota, Missouri, and South Dakota also exempt "authorized farm corporations." The Minnesota exemption applies to corporations with five or fewer stockholders, all of whom are natural persons or estates and hold the same class of stock, and a majority of whom reside on the farm or actively engage in farming. The corporation's passive income (rent, royalties, dividends, interest, and annuities) must not exceed 20 percent of its gross receipts. (27)

The South Dakota provision is similar to Minnesota's, except that 10 stockholders are permitted, none of whom is required to reside on the farm or engage in farming. (28) This would permit 10 unrelated nonfarmers to own a corporate farm business, in conjunction with nonfarm businesses, which could include food processing and marketing operations. The analogous Missouri provision contains no passive income provision, but requires that two-thirds of the exempted corporation's income be derived from farming. In Missouri, the only other criterion for the exemption is that all shareholders be natural persons, estates, or trusts (29); the number of shareholders is not limited.

The exemptions for authorized farm corporations in Missouri and South Dakota afford substantial leeway for fairly large and, to some extent, integrated corporations to engage in farming operations.

The Wisconsin statute contains an exemption that is a hybrid of the family farm and authorized farm exemptions discussed above. Any corporation with no more than two classes of stock and with 15 or fewer stockholders who are all natural persons or estates is exempted. (30) Lineal ancestors and descendants, aunts, uncles, and first cousins may be grouped as one stockholder; but only one such grouping is allowed in a single corporation. Thus all 15 stockholders in an exempted corporation could be unrelated, and one stockholder could actually be many people. Furthermore, this statute does not require that any stockholder reside on the farm or actively engage in its operation. Thus an exempted corporation could consist of a fairly large number of nonfarmers who presumably could amass a sufficiently large amount of capital to operate a farm of substantial size.

While the original proposed family farm act in Wisconsin was patterned closely after that of North Dakota, (31) the present statute is much more permissive than the North Dakota act, and would appear to be less intended to preserve the traditional family farm than to limit the size of farm corporations by limiting the number of stockholders. While the latter limitation may preclude huge conglomerates from engaging in agriculture, it would not seem to prevent the development of farming corporations bearing little resemblance to the traditional family farm.

General exemptions.

The four statutes have several lesser exemptions in common, including: land acquired by a corporation by process of law in the collection of debts, or held as security; farming operations and land owned by experimental and research farms, provided commercial sales are incidental to research or experimental work; farms engaged in raising breeding stock for resale to farmers, or growing seed. (32) In addition, the Minnesota, Missouri, and South Dakota statutes exempt gifts of agricultural land to nonprofit corporations. (33)

Exemption differences.

Some exemptions in the statutes appear to be fashioned to particular interests within the State, and in some cases lessen the impact of the general prohibitory provisions of the statutes. For example, the South Dakota statute recites that it was enacted to combat the threat of "conglomerates in farming." Nevertheless, this statute exempts "agricultural lands acquired by a corporation solely for the purpose of feeding livestock." (34) This exemption, permitting vertical integration in the livestock industry, could freeze out the family farmer, who may be unable to compete with large corporations. (35)

Similarly, the Missouri statute exempts agricultural land producing crops used exclusively for brewing, winemaking, or distilling. Such corporations thus need not buy their farm products from the family farmer. The statute also exempts the production of raw materials for manufacturing pharmaceuticals and processing chemicals, food additives, and related products. Curiously, production of poultry and poultry products, although included in the definition of farming in the Missouri Act, is exempted from coverage in a later section of the act. (36)

The amended Minnesota statute, while containing fewer exemptions for particular products than the South Dakota and Missouri statutes, does exempt:

> Agricultural land, either leased or owned, totaling no more than 2,700 acres, acquired after May 20, 1973 for the purpose of replacing or expanding asparagus-growing operations, provided that such corporation had established 2,000 acres of asparagus production. (37)

This exemption, limited to a particular product on a particular number of acres in the original statute, with the limitation expanded in the amendment, was undoubtedly tailored for a particular corporation or group of corporations. Thus, the Minnesota statute, defining more clearly the exempted family farms and authorized corporations and containing fewer seemingly illogical exemptions than the South Dakota and Missouri statutes, is not free from quirks.

The Wisconsin statute does not contain exemptions for particular products. It does, however, exempt farm production "incidental to the principal purpose" of a nonfarm corporation. (38) It is difficult to assess the ramifications of this exemption. It appears to be broader that the other three States' exemption for ownership of agricultural land "reasonably necessary" in the conduct of nonfarming corporations' business. The Wisconsin provision allows nonfarm corporations to produce prohibited crops, whereas the other three statutes permit nonfarm corporations to hold farmland only for nonagricultural purposes. (39) Furthermore, "incidental" farming operations may be subject to conflicting interpretations. The provision could conceivably allow large-scale farming by corporations whose primary purpose is nonagricultural, thereby allowing conglomerate involvement.

Enforcement.

The Wisconsin statute imposes a $1,000 fine for each day of violation of the statute by a corporation. The State district attorneys are authorized to sue to enjoin probable violations and to request a court order requiring the corporation to divest itself of land held in violation of the statute. (40) The other three State statutes do not impose fines for violations.

All four States, however, authorize the State attorney general to seek a court order of divestiture of lands held in violation of the statute. Any land not divested within the prescribed time is to be sold at public auction. Furthermore, the time limitation for divestiture operates as a covenant in the title to the land against any corporate grantee, assignee, or successor in interest of the violator, (41) thus precluding permanent transfer of title to another corporation.

Although Wisconsin has no reporting requirements, Minnesota, Missouri, and South Dakota each require that corporations engaged in farming or proposing to engage in farming file annual reports with the State, disclosing their location, real estate owned, and the identities of their officers and boards of directors. A corporation seeking to qualify as a family farm or authorized corporation must disclose, in addition: the number of shares owned by persons residing on the farm or actively engaged in farming, or their relatives within the third degree of kinship; the name, address, and number of shares owned by each shareholder; for Minnesota and South Dakota, the percentage of gross receipts obtained as passive income; for Missouri, the percentage of gross receipts from nonagricultural sources. (42)

Reporting.

Only Minnesota requires that the reports list the farm products which the corporation produces or intends to produce. With the numerous exemptions contained in the Missouri and South Dakota acts, this information would seem to be pertinent to any inquiry into corporate compliance with the statutes, and would increase the usefulness of the reports.

Under each statute, failure to file a report or filing of false information is a misdemeanor. (43) South Dakota, in addition, requires newly formed farm corporations to receive official certification of compliance with the statute before commencing farm operations. (44)

Oklahoma

In 1971, Oklahoma enacted legislation barring the chartering of domestic corporations, or the licensing of foreign corporations, for the purpose of engaging in farming or ranching, or for the purpose of owning or leasing any interest in land used for farming or ranching. Domestic family farm corporations are exempt. The shareholders of exempted corporations must be natural persons, estates, or trusts for the benefit of natural persons. The corporation must derive not more than 20 percent of annual gross receipts from sources other than farming or ranching or allowing others to extract minerals from corporate lands. In addition, the corporation may have no more than 10 shareholders who are not related as lineal descendants or by birth, marriage, or adoption. (45)

Corporate farms banned; family farm corporations allowed.

Like several of the statutes previously discussed, the Oklahoma act limits the ownership, leasing, or holding of agricultural lands by a nonfarming corporation to what is "reasonably necessary to carry out its business purpose." (46)

In contrast with the Iowa statute, aimed primarily at preventing vertical integration in the livestock industry, the Oklahoma statute appears designed to protect such arrangements. The act expressly states that it does not apply

Integrated corporations permitted.

> to corporations engaging in food canning operations, food processing or frozen food processing insofar as such corporations engage in the raising of food products for aforesaid purposes, (or) . . . where a corporation, either domestic or foreign, engages in research and/or feeding arrangements or operations concerned with the feeding of livestock or poultry . . . (47)

Vertically integrated corporations are thus free to continue and to expand their businesses. On the other hand, the act appears designed to freeze the expansion of other corporate farms, since it expressly exempts only property acquired by corporations on or before June 1, 1971. (48)

An unusual enforcement feature of the statute is that divestment proceedings may be brought against offending corporations by any resident of the county in which the corporate land is situated. If the action is successful, the statute expressly provides that the plaintiff be allowed a reasonable attorney's fee and that the defendant corporation be assessed all costs. If the plaintiff loses, however, he is assessed all costs and the defendant's attorney's fee. (49)

Enforcement by residents.

It will be interesting to observe whether this provision encourages enforcement proceedings. While the statute authorizes the bringing of actions by those whom it is intended to protect, the potential liability for a defendant's court costs and attorney's fees may considerably dampen the ardor of those who might otherwise be eager to enforce the act.

The statute contains no reporting requirements.

Kansas

Unlike the statutes previously discussed, the Kansas statute (50) does not prohibit corporate ownership of agricultural land. Rather, it prohibits corporations from producing directly or indirectly, enumerated products. The list of products differs somewhat from that of Wisconsin, (51) primarily in that Kansas does not prohibit livestock production, except for "milking of cows for dairy purposes." (52)

Corporations restricted; acreage, shareholder limits.

The Kansas statute specifically prohibits "producing, planting, raising, harvesting or gathering" wheat, corn, grain sorghum, barley, oats, rye, or potatoes, and milking cows for dairy purposes. (53) In barring corporate involvement in planting and harvesting, the statute is more restrictive than the Minnesota, Missouri, and South Dakota acts, which exclude contracting for furnishing of harvesting, spraying, or other farm services from the definition of farming. (54)

The Kansas statute differs from the Minnesota, Missouri, and South Dakota statutes in another important respect: it contains only two exemptions. The first is analogous to the "authorized farm corporation" exemption in the statutes of the three States. In Kansas, a corporation may engage in farming if it has no more than 10 stockholders, all of whom are individuals or fiduciaries for individuals and none of whom own stock in another corporation authorized to produce any of the prohibited farm products. While incorporators must be Kansas residents, stockholders need not be. The size of such authorized corporate farms is limited to 5,000 acres, whether the land is owned, controlled, managed, or supervised by such a corporation. (55)

The size limitation is unique among the authorized farm corporation exemptions of the several States, and would appear to be an effective means of preventing large-scale corporate competition against individual, smaller farmers. However, the limitation is without regard to soil quality and capacity; a 5,000-acre intensive row crop farm could provide substantial competition for small farmers, while 5,000 acres of soil suited only for pasture may be too small to exhaust all possible operating and managerial economies in cattle or sheep ranching.

The provisions barring a stockholder of one authorized farm corporation from owning stock in another such corporation afford added assurance that corporations cannot engage in large-scale farming. However, since the exemption does not require that any stockholders be related to each other or actively engaged in farming, it permits corporate farms to be run by unrelated nonfarmers, who, in addition, need not be State residents.

The only other exemption in the Kansas statute is for coal mining corporations, which are authorized to farm their own land which has been strip mined for coal. (56)

While the Kansas statute is thus not as broad in its prohibitory sweep as some other statutes, since it does not prevent corporate ownership of land usable for farming and prohibits corporate production of only certain enumerated products, it appears to be stronger than most other statutes because it contains fewer exemptions. There is no grandfather clause protecting farm corporations in existence prior to enactment of the statute. 13/

The exemption for authorized corporations appears better calculated to keep corporate operations small. Furthermore, since the State constitution defines corporations to include "all associations and joint stock companies having powers and privileges not possessed by individuals or partnerships," (57) the statute probably cannot be circumvented by organizing a farm business as a Massachusetts or business trust--a corporate-like business not requiring a State charter. (58)

Kansas requires that all corporations that own or lease 10 or more acres of land used or usable for farming must file annual reports with the secretary of state. (59) Such reports must state, in addition to information required of all domestic corporations, the acreage and location of land used or usable for farming which it owns or leases, the purposes for which such land is owned or leased, the value of its agricultural and nonagricultural assets, and the number of its stockholders. (60)

Iowa

Vertical integration in livestock prohibited.

In 1975, Iowa enacted a Corporate or Partnership Farming Law, the principal impact of which is to prohibit vertical integration in the livestock industry. Processors of beef or pork products whose annual wholesale production is $10 million or more are prohibited from owning, controlling, or operating a feedlot in Iowa in which hogs or cattle are fed for slaughter. Violators may be fined up to $50,000 and enjoined from further violation. (61)

The act defines feedlot to include areas used for raising crops or other vegetation upon which hogs or cattle fed for slaughter are allowed to feed. Processors include persons, firms, corporations, (including nonprofit corporations and cooperatives) and limited partnerships that are engaged in beef or pork processing, or that have a 10 percent or greater interest in another such entity. Processors are permitted to contract for the purchase or feeding of hogs, however. (62)

Nevertheless, the statute clearly requires separate ownership and control of livestock-feeding and meat-processing operations in Iowa. Any processor or limited partnership that owned, controlled, or operated a feedlot on the effective date of the act is required to dispose of it by July 1, 1985. (63)

13/ It should be noted that as early as 1931, Kansas prohibited the chartering of domestic corporations, or the granting of permission to foreign corporations, to engage in the same corporate farm production now prohibited by Kan. Stat. Ann. 17-5901 (1974). L. 1931, ch. 153, 1; Gen. Stat. Kan. (Ann.). 17-202a (1949).

The statute imposed a 1-year moratorium on acquiring (by purchase, lease, or otherwise) any additional agricultural land by corporations that own or lease agricultural land or engage in farming. (64) In an amendment enacted in 1977, the moratorium was also imposed against trusts and extended through August 15, 1980. (65) A trust is defined as "a fiduciary relationship with respect to property, subjecting the person by whom the property is held to equitable duties to deal with the property for the benefit of another person, which arises as a result of a manifestation of an intention to create it." It includes a legal entity holding property as trustee, agent, escrow agent, attorney in fact, and in any similar capacity. However, it does not include persons acting as executors, administrators, personal representatives, guardians, conservators, or receivers, who are grouped separately as operating in a fiduciary capacity. (66)

Land purchases restricted.

Exemptions from the moratorium are made for family farms and authorized farm corporations, which are roughly equivalent to the similarly named corporations exempted by Minnesota, Missouri, and South Dakota. The 1977 amendment also exempted family and authorized trusts. These exempted trusts correspond closely to family and authorized corporations, except that the trusts are defined in terms of beneficiaries rather than in terms of stockholders. However, an authorized trust may not have income that is exempt from Iowa or Federal taxation. Also exempted are testamentary trusts, that is, trusts created by devising or bequeathing property in trust in a will. (67)

The statute imposes numerous reporting requirements. Corporations that own or lease farmland or feedlots, or contract to feed poultry or livestock or to grow agricultural products must file annual reports with the secretary of state. (68) The information required is similar to that required by the Minnesota statute. (69) Reports are also required of: limited partnerships that own or lease agricultural land or engage in farming; fiduciaries or trustees acting on behalf of corporations, limited partnerships, and nonresident alien beneficiaries identified in reports filed by the above-named fiduciaries of trustees; and processors of beef or pork. Failure to file a report, or the willful filing of false information is punishable by a fine of up to $1,000. (70)

The Iowa law appears to be most significant in its forceful separation of feedlot and meat-processing operations, and its unique recognition, at least in its reporting requirements, that limited partnerships are in large measure capable of the same undertakings as corporations, and thus ought to be subject to the same regulations. Limited partnerships, however, are not subject to the moratorium on new acquisitions of farmland. (71)

A second significant feature of the Iowa statute is the explicit, detailed definition of the entities to which the statute applies: corporations are explicitly defined to include cooperatives; trusts are brought within the ambit of the statute, and are clearly defined to include certain fiduciaries and exclude others; and exempted entities are clearly defined.

While the moratorium provision is temporary, its breadth of application and its definitional clarity are extraordinary when compared with most other State statutes.

Texas

Texas statutes limiting corporate ownership and operation of farms and farmland are very specific and affect only a limited part of Texas agriculture. One statute prohibits a corporation from doing business in the State if the corporate purpose is to combine raising cattle and owning land for

Livestock limitations.

that purpose and also operating stockyards and slaughtering, refrigerating, canning, curing, or packing meat. (72) Any combination of the two businesses is prohibited. The statute is apparently intended to separate open range cattle or yardage, and slaughtering, processing, and storing meat. However, the statute does not prohibit an incorporated packing or stockyard firm from owning and operating feedlots and from feeding cattle.

Disposal of unnecessary land.

The other relevant Texas statute requires corporations to dispose of land not necessary to their business within 15 years from the date of its acquisition. A corporation may not have real estate holdings as one if its purposes, except a "town lot" corporation, operating in or near a city. (73) This provision appears similar to provisions in farm legislation of other States and apparently is directed at passive investment in land.

Nebraska

Reporting required.

In 1975, Nebraska enacted reporting requirements applicable to corporations that hold fee title, leasehold interests, or any intermediate forms of interest in agricultural land in the State. (74) The information required is similar to that required in reporting statutes of other States. This statute imposes no restrictions on corporate ownership or operation of farms.

Another provision (75) bars corporations not organized in the State from owning or leasing land in the State for more than 5 years, subject to certain exceptions which do not include use of land for farming or ranching.

Oregon

Reporting required.

In 1977, Oregon enacted reporting requirements applicable to business corporations, nonprofit corporations, and cooperative corporations that engage in farming (including raising or producing any farm product) or own or lease any parcel of land containing more than 40 acres of farmland. (76) The reports must be submitted annually to the State's corporation commissioner and must include: the name of each county in Oregon in which the corporation farms or owns or leases farmland, and the primary farm products produced; States, other than Oregon, and foreign countries, in which it farms or owns or leases farmland; the name and address of each corporate director; and the name and address of each individual or business entity that owns or controls 10 percent or more of the voting rights or shares. The act took effect on January 1, 1978, and is repealed by its own terms on July 1, 1981.

West Virginia

In West Virginia, in order for a corporation to hold more than 10,000 acres of land, it must obtain a certificate from the secretary of state, authorizing all landholdings above 10,000 acres. Certificates are issued on payment of a tax of 5 cents per acre on all excess acreage. (77)

Legal Conclusions

The Nebraska Legislature, in enacting that State's reporting requirements for farm corporations, declared that its intent was

> to nurture the free enterprise system to provide for the continued existence of the family farm against potential monopolization of the agricultural industry, and . . . (to pursue) documented evidence of any anticompetitive forces at work within the agricultural industry in Nebraska . . . (78)

That appears to be the intent behind most State legislation restricting corporate ownership and operations of farms. State legislatures have responded to the family farmers' perceived threat to their well being, namely, that competition from large agribusiness organizations may result in the extinction of the family farm.

While the statutes impose substantial limits on corporate farming, they do not insulate the family farmer from large farm enterprises, either corporate or otherwise. It is important to note that the statutes uniformly attack the problem by restricting corporate involvement in agriculture. None of the statutes prohibits farming operations conducted by other business organizations such as business trusts or partnerships. Such organizations are free to engage in the activities that are barred to corporations. (79)

Some of the statutes are probably effective in prohibiting corporations from owning farmland through noncorporate intermediaries. At least, the wording of the statutes that prohibit corporations from owning any interest in farmland, "directly or indirectly . . . whether legal, beneficial or otherwise," (80) indicates a legislative intent to prevent circumvention of the statutes in this manner. In the absence of such language, however, a corporation may be able to own land through a partnership or trustee. (81)

In addition to restricting corporate ownership of farmland, many statutes also prohibit corporate operation of farms. Such provisions appear to be intended as an additional guard against vertical integration in the food industry. Food-processing corporations, however, are still free to contract with farmers for their production. Since the processor is often in a strong bargaining position, such contracts may be very favorable to the processor and impose relatively harsh conditions on the individual farmer. (82) The corporate farm legislation does not provide a remedy for the inferior bargaining position of the family farmer. Nevertheless, the statutes in varying degrees do seek to preserve a place in the chain of production for the independent farmer and, to that extent, provide protection for the family farmer.

Not every farmer is assured of a protected position from corporations, however. The degree of protection depends on the type of product produced and the State in which the farm is located. With the exception of North Dakota, none of the States prohibit corporate production of all agricultural, dairy, and livestock products. The Texas statute limits only vertical integration in the cattle industry. Similarly, the permanent provisions of the Iowa act prohibit only certain beef and pork processors from also engaging in the feeding of livestock.

On the other hand, the Oklahoma statute exempts corporations engaged in livestock and poultry feeding, food processing, and food canning from the general prohibition imposed on corporate farming and ranching. Wisconsin and Kansas have enumerated specific products that corporations are forbidden to raise; other production is not regulated. Minnesota, Missouri, and South Dakota have enacted broad prohibitions, but have also provided numerous exemptions for certain producers.

Only the North Dakota act appears applicable across the entire range of farm production; even here, certain farmer cooperative corporations are exempted. Given the differences among the various statutes, it is likely that a particular corporation may find that its activities are proscribed in a few States but allowed in many others.

Most of the statutes permit the independent farmer to incorporate under the family and authorized farm exemptions. Such exemptions vary from State to State, however, and the character of the corporations permitted under these exemptions may bear little resemblance to the traditional family farm. Minnesota's family farm exemption is probably one of the best in exempting only true family-run corporations by its requirement that at least one family member reside on or actively operate the farm.

The corporate farming acts do not protect the individual farmer either from potentially large noncorporate business organizations or from all corporate farm businesses. However, the acts do not appear to be unconstitutional even though they prohibit corporations from doing what individuals, partnerships, and limited partnerships are permitted to do. There is probably a reasonable relation between the restriction on corporations and the acts' objective, which is to preserve competitive conditions in the farming industry. It is probable that in the States that have passed corporate farm legislation, corporations are the most prevalent large business organizations, and that corporations, more than other business organizations, have in fact presented the greatest threat to competitive conditions in agriculture in those States. That a statute burdens corporations but not individuals, partnerships, or associations is not a denial of equal protection if there is a real and substantial distinction, having a just relation to the legislative object, between corporations and other entities. (83)

The statutes not only discriminate between corporate and noncorporate businesses, but also among different types of farm corporations. Existing corporate farms, family and authorized corporate farms, and producers and processors of particular products are frequently exempted. The exemptions for food processors, in particular, appear to undercut the prevention of vertical integration, one of the main purposes of the acts. Furthermore, certain highly particular exemptions, such as that for certain asparagus growers in Minnesota, might be thought arbitrary, and subject to attack on equal protection grounds. (84)

However, in challenging any exemption, the burden of proof is on the plaintiff to show that the exemption does not rest on a reasonable basis, but is arbitrary. (85) Given a genuine difference between corporations that are exempted and those that are not, the discrimination between the two is presumed relevant to a permissible legislative purpose, and will not be deemed a denial of equal protection if any state of facts can be conceived to support it. (86)

States are accorded wide latitude in regulating their local economies under their police powers, and rational distinctions may be made with less than mathematical exactitude. (87) An attack on the statutes by nonexempt corporations on the basis of discriminatory exemptions would thus, in most instances, be unlikely to succeed.

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4. N.D. Century Code 10-06-04 (1960).

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6. N.D. Century Code 10-06-05 (1960); see also Loy v. Kessler, 76 N.D. 738, 39 N.W. 2d 260 (1949).

7. N.D. Century Code 10-06-06 (1960); see also Loy v. Kessler, 260 272.

8. Coal Harbor Stock Farm, Inc. v. Meier, 191 N.W. 2d 583, 588 590-592 (N.D. 1971).

9. Ibid. at 592.

10. Asbury Hospital v. Cass County, 72 N.D. 359, 7 N.W. 2d 438, 449 (1943), aff'd., 326 U.S. 207 (1945).

11. Coal Harbor, 583, 592.

12. Asbury Hospital; Coal Harbor, 583, 589-592.

13. Two unreported lower state court decisions, Baldwin Corp. v. Dickey County, (D. Ct. of Dickey Co., N.D., Oct. 26, 1942), and Northwestern Improvement Co. v. Morton County (D. Ct. of Morton Co., N.D., Feb. 24, 1942), as cited in McElroy, op. cit., held that the Corporate Farming Law does not apply to corporations chartered to engage in real estate transactions, because owning land was "reasonably necessary" in their business. These decisions were not appealed.

14. Ch. 324, Minn. Stat. 1975, amending Minn. Stat. Ann. 500.24 (Supp. 1974); Mo. Acts No. 114 (1975) (Vernon's Mo. Leg. Serv. 260-262, 1975, No. 2); S.D. Compiled Laws Ann. Ch. 47-9A (Supp. 1974); Wis. Stat. Ann. 182.001 (Supp. 1975-76).

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16. Minn. Stat. Ann. 500.24(2), as amended (1975); Mo. Acts No. 114, 2 (1975); S.D. Compiled Laws Ann. 47-9A-3 (Supp. 1974); Wis. Stat. Ann. 182.001(1) (Supp. 1975-76).

17. Minn. Stat. Ann. 500.24(1) (a) (1975); Mo. Acts. No. 114, 1 (1), 2(5) (1975); S.D. Compiled Laws Ann. 47-9A-2(2) (Supp. 1974).

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19. Minn. Stat. Ann. 500.24(2) (1975); Mo. Acts No. 114, 2 (1975); S.D. Compiled Laws Ann. 47-9A-3 (Supp. 1974).

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23. Minn. Stat. Ann. 500.24(2) (h) (1975); Mo. Acts. No. 114, 2 (8) (1975); S.D. Compiled Laws 47-9A-12 (Supp. 1974).

24. Wis. Stat. Ann. 182.001(2) (e) (Supp. 1975-76).

25. Minn. Stat. Ann. 500.24(1) (c) (1975).

26. Mo. Acts. No. 114, 1(3) (1975); S.D. Compiled Laws 47-9A-14 (Supp. 1974).

27. Minn. Stat. Ann. 500.24(1) (d) (1975).

28. S.D. Compiled Laws 47-9A-15 (Supp. 1974).

29. Mo. Acts No. 114, 1 (4) (1975).

30. Wis. Stat. Ann. 182.001(1) (Supp. 1975-76).

31. Wis. Assembly Bill 244 (1969).

32. Minn. Stat. Ann. 500.24(2) (a), (d), (e), (i) (1975); Mo. Acts. No. 114, 2(1), (4), (5), (9) (1975); S.D. Compiled Laws 47-9A-6, 7, 9, 10 (Supp. 1975); Wis. Stat. Ann. 182.001(2) (a), (d) (Supp. 1975-76). Each statute requires that the corporation dispose of such land within 10 years (5 years in Wisconsin). All but Wisconsin permit the corporation to lease the land for farming to individuals, family farm corporations, and authorized farm corporations, but otherwise forbid use of the land for farming.

33. Minn. Stat. Ann. 500.24(2) (g) (1975); Mo. Acts No. 114, 2 (7) (1975); S.D. Compiled Laws 47-9A-8 (Supp. 1975).

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35. Curtis S. Jensen, "The South Dakota Family Farm Act of 1974: Salvation or Frustration for the Family Farmer?" 20 South Dakota Law Review (1975).

36. Mo. Acts No. 114, 2(5) (1975).

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50. Kan. Stat. Ann. 17-5901 (1974).

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52. Kan. Stat. Ann. 17-5901(a) (1974).

53. Ibid.

54. Minn. Stat. Ann. 500.24(1)(a) (1975). This statute, like the Missouri and South Dakota acts, excludes from the definition of farming, "a contract whereby a

processor or distributor of farm products or supplies provides spraying, harvesting or other farm services"; Mo. Acts No. 114, 1(1) (1975); S.D. Compiled Laws 47-9A-2(2) (Supp. 1975).

55. Kan. Stat. Ann. 17-5901(a) (1974).

56. Ibid.

57. Kan. Const. art. 12, 6.

58. State v. United Royalty Co., 188 Kan. 443, 363 P. 2d 397 (1961).

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71. Iowa Code Ann. 172C.4.

72. Vernon's Ann. Civ. Stat. Bus. Corp. Act., art. 2.01(B) (3) (a) (1955), art. 1302-4.02 (1961).

73. Ibid., art. 1302-4.02, 4.04, 4.05 (1961).

74. Neb. Rev. Stat. 76-1501 et seq. (1975 Supp.). Presumably the statutory language, "or any greater interest less than fee" denotes estates in land involving joint ownership or a future interest.

75. Neb. Rev. Stat. 76-402 (1939). See discussion of this provision in the appendix.

76. 1977 Oregon Laws, ch. 49.

77. W. Va. Code 11-12-75 (1974 Repl. Vol.), effective 1939.

78. Neb. Rev. Stat. 76-1501 (1975 Supp.).

79. Some States, however, restrict business trusts, which in Kansas, for example, are viewed as subject to the same regulatory provisions as corporations. See State v. United Royalty Co., 188 Kan. 443, 363 P. 2d 397 (1961).

80. Minn. Stat. Ann. 500.24(2) (1975); Mo. Acts No. 114, 2 (1975); S.D. Compiled Laws 47-9A-3 (Supp. 1975).

81. Fred L. Morrison, "State Corporate Farm Legislation," 7 Toledo Law Review (1976). But in Coleman v. San Rafael Turnpike Co., 49 Cal. 517, 522 (1875), it was ruled that whenever a corporation cannot take legal title to land, it cannot take a beneficial interest in it.

82. For an example of such a contract, see Campbell Soup Co. v. Wentz, 172 F.2d 80, 83 (3d Cir. 1948).

83. Mallinckrodt Chemical Works v. Missouri, 238 U.S. 41, 55 (1915); also Crescent Oil Co. v. Mississippi, 257 U.S. 129, 139 (1921).

84. In this regard, Morey v. Doud, 354 U.S. 475 (1957), appeared to provide a precedent for such an attack. However, the decision in that case was recently overruled in City of New Orleans v. Dukes, 427 U.S. 297 (1976).

85. Lindsley v. Natural Carbonic Gas Co., 220 U.S. 61, 78-79 (1911).

86. City of New Orleans v. Dukes; also, Asbury Hospital v. Cass County.

87. City of New Orleans v. Dukes. On the Other hand, the Supreme Court has noted that "very different principles govern even economic regulation when constitutional provisions such as the Commerce Clause are implicated . . ." ibid. It has been suggested that the corporate farm statutes may be subject to challenge under the Commerce Clause. See Morrison, op. cit., and Comment, "Proposed Anticorporate Farm Legislation," 1972 Wisconsin Law Review, 1189, 1211-1212.

APPENDIX:
State Restrictions on Ownership of Real Estate by Alien Corporations

Concern about alien investment in U.S. agriculture has been associated with the large surplus of investable funds of certain oil-exporting nations and the possibility that they might invest in farmland, farming operations, and other parts of the U.S. food and fiber system. Such investment has apparently not occurred to any noticeable extent; more commonly, West European investors buy U.S. farmland. These investments may be made for various reasons, such as the stability of the U.S. economy, the increasing demand for farm products, and prospects for real estate appreciation in value. In addition, farm real estate is easily managed by U.S. management companies at relatively low costs.

The following discussion is confined to State statutes applicable to alien corporations. State legislation restricting ownership of real estate by alien individuals is discussed by Fred Morrison and Kenneth Krause. (1) Other articles (2) address Federal issues and restrictions on aliens.

The provisions of the corporation statutes of the 10 States are applicable to both domestic and foreign corporations. In addition, however, several statutes in the 10 States, and South Carolina, contain provisions regulating ownership of real estate by corporations organized in foreign countries or owned by aliens. 1/

Two States limit the acreage that may be held by alien corporations. In South Carolina, the limit is 500,000 acres; in Wisconsin, 640 acres. (3) However, the statutes vary in their definitions of the alien corporations so restricted. The South Carolina act applies to corporations in which more than half the stock is owned by aliens. The Wisconsin provision applies to corporations in which more than 20 percent of the stock is owned by nonresident aliens.

Minnesota prohibits a business entity from acquiring any interest in farmland, legal or beneficial, including leaseholds, unless at least 80 percent of each class of stock issued and outstanding or 80 percent of the ultimate beneficial interest of the entity is held directly or indirectly by U.S. citizens or permanent resident aliens. (4) This restriction is in addition to those imposed by the corporate farming law; however, the alien restrictions also include some of the exemptions contained in that statute. A grandfather clause exempts land acquired prior to May 27, 1977, but such holdings are subject to a reporting requirement. Land held in violation of the statute is subject to divestiture, and failure to report lands held under the grandfather clause is a gross misdemeanor. (5)

Iowa and Nebraska have the most restrictive legislation on the ownership of real estate by alien corporations. In Iowa, apart from the corporation's right to enforce liens and judgments and to purchase real estate at a sale by virtue of a lien or judgment, corporations organized abroad or in which one-half of the stock is owned or controlled by nonresident aliens are prohibited from obtaining title to or holding real estate. Any real estate obtained in satisfaction of a lien or judgment, or by purchase at a sale pursuant to a lien or judgment, must be sold within 10 years, or title to it escheats to the State. (6)

Nebraska, like Iowa, permits an alien corporation to obtain title to land upon which it holds a lien, subject to resale within 10 years. Alien corporations may also hold land necessary for manufacturing or industrial establishments, and for the conduct of business. Landholding restrictions do not apply to alien corporations that operate

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1/ Arizona formerly forbade corporations organized abroad from owning or holding land in the State, Ariz. Rev. Stat. Ann. 10-484(D). The prohibition was repealed, however, by Ariz. Laws, Ch. 69, 1 (1975), effective July 1, 1976.

as producers, distributors, and retailers of oil and gas, railroads, public utilities, or common carrirs. Land in cities and villages, or within 3 miles thereof, may also be held by alien corporations. But apart from the above, corporations whose executive officers or managers are aliens, or the majority of whose directors are aliens, or the majority of whose stock is owned by aliens, may not own or hold any land in Nebraska. In addition, American corporations not incorporated within Nebraska may not acquire title to Nebraska land, nor lease such land for more than 5 years. (7)

The reporting requirements of both Iowa and Nebraska require disclosure of stockholders who are aliens, and, in Nebraska, of directors, executive officers, and managers who are aliens. (8)

A good perspective on the issue of alien investment is afforded in a publication recently released by the U.S. General Accounting Office, Report by the Comptroller General of the United States, "Foreign Ownership of U.S. Farmland--Much Concern, Little Data," CED-78-132, 1978.

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